



MANDVIWALLA & ZAFAR
ADVOCATES

CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

Thursday, 08 October 2026

Upload Window: 30 September to 8 October 2026 (Sunday 4 October excluded)

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Coverage and exclusions: this issue covers the eight working days from 30 September to 8 October 2026. The pool was again very large — twelve Supreme Court uploads, ten Federal Constitutional Court, some fifty Lahore High Court

judgments approved for reporting, and fifteen Sindh High Court judgments carrying citations — of which fourteen have been curated. (a) Two Supreme Court uploads are image-only scans with no text layer: C.P.L.A. No. 4211 of 2023 (*Khurram Rasheed v. Ch. Haider Zaman*, declaration/ownership, 8 pages) and C.P.L.A. No. 1157 of 2021 (*Barkat Khan v. Banaras Khan*, declaration/inheritance, 11 pages). Neither carries a visible reporting endorsement in the extractable layer. They have been placed in the carry-forward queue and will be transcribed by render-and-read for a later issue if, on inspection, they prove reportable. (b) Two Supreme Court items uploaded on 28 and 29 September — Crl.P.L.A. No. 1449 of 2026 (*Chaudhary Shahzaib Shamim*, bail after arrest) and C.P.L.A. No. 1157 of 2021 — appeared after the scan for the briefing of 29 September had closed and have been swept into this window. (c) Supreme Court items approved for reporting but not curated, being largely fact-bound, are Crl.P.L.A. No. 100-K of 2026 (*Syed Muhammad Ashfaq*, bail), Crl.P.L.A. No. 1449 of 2026, C.P.L.A. No. 249-L of 2025 (Additional I.G. Traffic Police, absorption), C.P.L.A. No. 1683 of 2025 (*Muhammad Shafiq*, withdrawal of promotion), C.P.L.A. No. 428 of 2025 (*Pakistan Railways*, proforma promotion) and C.P.L.A. No. 4959 of 2025 (*Sadiq Subhani*, execution in a family matter); each is available on request. (d) Federal Constitutional Court items not carried are F.C.P.L.A. No. 1275 of 2026 (NUML), C.M.A. Nos. 34 and 36 of 2026 (companions to C.M.A. No. 37 of 2026, digested below), C.P.L.A. Nos. 800 and 1581 of 2023 with Crl. A. No. 383 of 2023 (cancellation of apartment allotments and the related contempt appeal, in which it was held that fresh consideration after a personal hearing was lawful rectification of an erroneous administrative act and not contempt), C.P.L.A. No. 538-P of 2023, C.P.L.A. No. 4687 of 2025 (SEPCO) and C.P.L.A. No. 2501 of 2024 (*Peshawar Development Authority*). (e) The Lahore High Court list is too long to reproduce; among the approved-for-reporting judgments not curated are 2026 LHC 6733, 6722, 6717, 6709, 6697, 6682 (section 163, Customs Act), 6673, 6666 (S.R.O. 500(I)/2003), 6660, 6627, 6613 (omission of oath a curable irregularity), 6608, 6570, 6558, 6553, 6537, 6525, 6516 (Article 64, Qanun-e-Shahadat), 6505, 6494, 6483, 6477 (a co-owner's competence to seek ejectment), 6467, 6457, 6433, 6383, 6373, 6365, 6356 (lashes and election), 6346, 6340, 6327, 6318, 6311, 6301, 6288, 6278, 6267, 6258, 6250, 6242, 6231, 6223 and 6211 (recovery of advance increments erroneously granted), together with 2025 LHC 8735 (the meaning of 'owner' and 'lessee in perpetuity' for property tax); all are available on request. (f) Sindh High Court judgments carrying citations but not curated include 2026 SHC KHI 1900, 1896, 1889, 1887, 1885 and 1883/1884, 2026 SHC MPK 1897, 1898, 1899 and 1878/1879, and 2026 SHC LAR 1901. (g) A note on the Islamabad High Court: for the first time since 18 March 2026, that Court's public listing of reported judgments has been added to. The new entry, *Muhammad Idrees v. Federation of Pakistan* (Institution No. 12297 of 2026, decided 30 September 2026 by Shahruxh Arjumand, J), is a single-paragraph order sustaining office objections and allowing seven days for their removal. It is not a reportable judgment, and the Islamabad High Court accordingly contributes nil to this issue, as it has since March; the gap in substantive reported output now stands at a little under seven months. (h) One disclosure: in Spl. Sales Tax Reference Applications Nos. 182 and 183 of 2025 (*M/s Zafar Securities (Pvt.) Limited*), digested below, the applicant was represented by Hassan Ali and Jahanzeb Sukhera, Advocates. The entry is written from the judgment as delivered and states the outcome on both limbs, including the part decided against the applicant. (i) The long-standing portal defect in Const. P. No. 875 of 2025 (2026 SHC KHI 1583) and the listing mismatch affecting Spl. Sales Tax Ref. A. No. 135 of 2025 (*Coca-Cola*) both remain unresolved.

Federal Constitutional Court of Pakistan

3 judgments

CONSTITUTION OF PAKISTAN, 1973 ARTS. 10-A, 175F(1) AND (2), 188; SUPREME COURT RULES, 1980 O. XXVI R. 1; ISLAMABAD WILDLIFE (PROTECTION, PRESERVATION, CONSERVATION AND MANAGEMENT) ORDINANCE, 1979 S. 21(3); ISLAMABAD NATURE CONSERVATION AND WILDLIFE MANAGEMENT ACT, 2024 SS. 3, 12(3) AND (4) — REVIEW ALLOWED AND A JUDGMENT OF THE SUPREME COURT SET ASIDE WHERE FINDINGS OF A FINAL CHARACTER WERE RECORDED IN INTERLOCUTORY PROCEEDINGS AGAINST PERSONS WHO HAD NOT BEEN HEARD

Metropolitan Corporation, Islamabad and Capital Development Authority v. Luqman Ali Afzal (The Monal) and others

REVIEW PETITIONS ALLOWED AND THE JUDGMENT UNDER REVIEW SET ASIDE IN THE STATED TERMS; THE CONSEQUENTIAL REVIEW JUDGMENT OF 10.09.2024 HELD NOT TO SURVIVE; DIRECTIONS ISSUED FOR THE CIVIL SUITS TO BE CONSOLIDATED AND DECIDED AFRESH; APPROVED FOR REPORTING

C.R.P. No. 825 of 2024 and F.C.R.P. No. 44 of 2025 in C.P.L.A. No. 304 of 2022, Federal Constitutional Court of Pakistan (for review of the judgment dated 21.08.2024 of the Supreme Court of Pakistan, reported as PLD 2024 SC 925) · Bench: Syed Hasan Azhar Rizvi, Aamer Farooq and Syed Arshad Hussain Shah, JJ (judgment by Syed Hasan Azhar Rizvi, J) · Decided: Short order 13.07.2026; detailed reasons 29.09.2026 · Uploaded: 02.10.2026

FACTS

The Capital Development Authority leased a site at Gokina Moor, Pir Sohawa, Islamabad to the Monal Group of Companies through its sole proprietor for the establishment and operation of a restaurant, by a lease agreement dated 10.03.2006. Following the establishment of local government in the Federal Capital in 2015, management of the restaurant site and its revenue vested in the Metropolitan Corporation. By judgment dated 21.08.2024 (PLD 2024 SC 925), delivered in proceedings arising out of interlocutory orders in pending civil suits, the Supreme Court set aside the 2006 Agreement and declared the Wildlife Management Board constituted under the Ordinance of 1979 entitled to receive the rent deposited in Court — notwithstanding that the Board had never asserted such a claim before any forum — and directed that the Board determine how the mountain ridge should thereafter be utilised. The Corporation and the CDA filed review petitions under Article 188 read with Order XXVI Rule 1 of the Supreme Court Rules, 1980. During their pendency this Court was established by the Constitution (Twenty-Seventh Amendment) Act, 2025; by Article 175F(2) all petitions, appeals, review petitions and other proceedings falling within its jurisdiction and pending before the Supreme Court stood transferred to it, and the Supreme Court ceased to exercise jurisdiction over such matters.

LEGAL ISSUE

Whether the judgment under review should be recalled on the ground that findings of a final and conclusive nature were recorded, in interlocutory proceedings arising out of pending civil suits, upon questions falling within the exclusive domain of the Civil Court and against persons who were neither parties nor heard; and the respective statutory domains of the CDA and the Wildlife Management Board over the Margalla Hills National Park.

HOLDING

The review petitions were allowed and the judgment under review set aside in the stated terms. The law attaches great importance to the finality of judicial decisions, but finality is a means to secure certainty and stability and cannot be elevated into an end that perpetuates an error resulting in manifest injustice. The case represented an exceptional instance in which the limits of judicial power were transgressed: in deciding interlocutory proceedings, findings of a final and conclusive nature were recorded on questions properly falling within the exclusive domain of the Civil Court after the recording and appreciation of evidence; those findings prejudged the pending disputes and adversely affected persons who were neither parties nor afforded an opportunity of being heard as required by Article 10-A, and the prejudice was compounded in the review jurisdiction where the present petitioners were not afforded an effective opportunity. A judgment affecting the rights of persons who have not been heard cannot ordinarily be permitted to attain finality merely because it has been pronounced by the highest Court. On the merits, questions of entitlement to and ownership of the restaurant site, its lease and the recovery of rent involve disputed questions of fact requiring adjudication by the competent Civil Court; the Margalla Hills National Park forms an integral part of the Islamabad Capital Territory, so that approval of construction for public purpose within it falls within the

statutory jurisdiction of the CDA, while the Board constituted under section 3 of the Act of 2024 is responsible for implementing that Act including compliance with sub-sections (3) and (4) of section 12. The direction that the Board determine the future utilisation of the ridge undermined the CDA's statutory jurisdiction over land use, planning, zoning and development and was set aside, with rent withdrawn or recovered by the Board to be deposited into the public exchequer.

LEGAL SIGNIFICANCE

Of the first importance on two separate levels. Constitutionally, it is a leading illustration of the Federal Constitutional Court exercising, under Article 175F(2), the review jurisdiction transferred to it over judgments of the Supreme Court, and the judgment opens by setting out that jurisdictional basis with care — practitioners with review petitions pending at the time of the Twenty-Seventh Amendment should read paragraph 3 closely. Doctrinally, it is a strong statement on the limits of review: the Court holds that the power to rectify a manifest wrong does not depend upon an enabling procedural rule but inheres in the judicial function, and that where an error arose from a mistaken assumption of fact or law without which the earlier judgment would not have been rendered, nothing precludes recall. The passage on a judgment affecting persons who were never heard is the one that will be cited. Substantively, the decision restores the CDA's planning and zoning jurisdiction over the Margalla Hills National Park, confines the Wildlife Board to implementing the Act of 2024, and returns the underlying disputes to the Civil Court to be tried on evidence — expressly directing that the Civil Court proceed without being influenced by any findings of this Court, the Supreme Court, the High Court or the District Judge.

LEGAL PROPOSITIONS (VERBATIM)

- *The law undoubtedly attaches great importance to the finality of judicial decisions.*
- *A judgment affecting the rights of persons who have not been heard cannot ordinarily be permitted to attain finality merely because it has been pronounced by the highest Court.*
- *The power to rectify a manifest wrong does not depend upon the existence of an enabling procedural rule; rather, it inheres in the very function of the Court.*
- *Law must bend in aid of justice.*

LEGAL PRINCIPLES EXPOUNDED

Where an error identified in review arose from a mistaken assumption of fact or law, and the earlier judgment would not have been rendered but for it, the Court may recall or rectify the error.

Source: Accordingly, where the Court is satisfied that an error identified in a review petition arose from a mistaken assumption of fact or law, and that the earlier judgment would not have been rendered but for such erroneous assumption, the perpetuation of which would result in a miscarriage of justice, nothing precludes the Court from recalling or rectifying the error in the exercise of its review jurisdiction.

Authority: Article 188, Constitution of Pakistan, 1973; *Chairman, Board of Intermediate & Secondary Education, Lahore v. Ali Mir* (1984 SCMR 433); *Suba v. Fatima Bibi* (1996 SCMR 158)

Findings of a final and conclusive nature should not be recorded in interlocutory proceedings upon questions falling within the exclusive domain of the Civil Court.

Source: In the course of deciding interlocutory proceedings arising out of pending civil suits, findings of a final and conclusive nature were recorded on questions that properly fell within the exclusive domain of the Civil Court after the recording and appreciation of evidence.

Authority: Article 10-A, Constitution of Pakistan, 1973

The duty to correct an error is an obligation cast upon every Judge by the oath to preserve, protect and defend the Constitution and the law.

Source: We are, therefore, firmly of the view that the duty to correct an error is an obligation cast upon every Judge by the solemn oath taken upon assuming judicial office to preserve, protect, and defend the Constitution and the law of Pakistan.

Authority: Article 188, Constitution of Pakistan, 1973

OPERATIVE ORDER

In view of the foregoing, these review petitions are allowed, and the judgment under review is set aside in the above terms. Consequently, the review judgment dated 10.09.2024 cannot survive independently and must necessarily meet the same fate. Accordingly, the earlier review petitions as well as other Miscellaneous Applications, if any, are also disposed of in the above terms.

■ View Full Judgment

SUPREME COURT RULES, 2025 (AS ADOPTED) O. XXVII R. 8, O. X R. 2, O. XXXV RR. 1 AND 6; FEDERAL CONSTITUTIONAL COURT (PRACTICE AND PROCEDURE) RULES, 2026 O. V R. 3; CONSTITUTION OF PAKISTAN, 1973 ARTS. 175F, 175G — AFTER FINAL DISPOSAL OF A FIRST REVIEW, NO SUBSEQUENT REVIEW LIES; AN APPLICATION FOR 'RECALL' WHICH IN SUBSTANCE SEEKS RECONSIDERATION OF THE JUDICIAL CONCLUSION IS A SECOND REVIEW WHATEVER ITS DESCRIPTION

Managing Director, Oil & Gas Development Company Limited, Islamabad v. The Registrar, Federal Constitutional Court, Islamabad and another

CIVIL MISCELLANEOUS APPEAL DISMISSED AND THE OFFICE OBJECTION MAINTAINED; APPROVED FOR REPORTING

Civil Miscellaneous Appeal No. 37 of 2026, Federal Constitutional Court of Pakistan (against the office objection dated 03.07.2026 returning the appellant's miscellaneous application) · Bench: Syed Hasan Azhar Rizvi, J (Judge in Chambers) · Decided: 30.09.2026 · Uploaded: 02.10.2026

FACTS

The private respondent's writ petition was dismissed by the Islamabad High Court on 02.02.2022. On his petition the Supreme Court, by judgment dated 17.09.2025 reported as Shakeel Ahmed Kayani v. Managing Director/Chief Executive Officer, Islamabad (2026 SCMR 449), converted the petition into an appeal, allowed it and held him entitled to additional pension under section 5 of the Oil and Gas Development Corporation (Re-organization) Ordinance, 2001 read with Regulation 15(1A) of the Pension and Gratuity Regulations, 1985. The appellant sought review. During the pendency of that review this Court was established by the Constitution (Twenty-Seventh Amendment) Act, 2025, and the review petition stood transferred under Article 175F(2). By order dated 11.05.2026 a two-member Bench dismissed the review as having become infructuous: a second request for adjournment had been sent by counsel, the Advocate-on-Record was present in Court, and counsel for the respondent stated that the order had been complied with and the dues paid, as borne out by a compliance report. The appellant then filed a miscellaneous application seeking recall of that order and restoration of the review petition, which the Registrar returned as not entertainable under Order XXVII Rule 8 read with Order X Rule 2 of the Rules of 2025.

LEGAL ISSUE

Whether a miscellaneous application seeking recall of an order dismissing a review petition as infructuous, and restoration of that petition, is a permissible application to correct a procedural defect or is in substance a second review barred by the Rules; and whether the Registrar could return it.

HOLDING

The appeal was dismissed and the office objection maintained. The character of the application must be determined from the grounds urged and the relief sought, rather than its designation or the provisions cited in its title. Order XXVII Rule 8 provides that after final disposal of the first application for review no subsequent application for review shall lie or be entertained by the Registry; the provision refers to final disposal and is not confined to dismissal after adjudication of every ground raised in the first review. Order X Rule 2, subject to the provisions governing review, prohibits alteration of or addition to a judgment pronounced in open Court except to correct a clerical or arithmetical mistake or an error arising from an accidental slip or omission. Read together these prevent a concluded review from being reopened by a subsequent application seeking substantive reconsideration. The order of 11.05.2026 did not dismiss the review for non-appearance or want of prosecution; the Bench took notice of the renewed adjournment request, the presence of the Advocate-on-Record and the compliance report, and concluded that the review had become infructuous. The appellant's contention that compliance did not have that legal effect directly called that conclusion into question, and its acceptance would require reconsideration of a judicial determination made in review

jurisdiction. The absence of private counsel did not leave the appellant unrepresented and was not by itself a procedural defect. Rules 1 and 6 of Order XXXV are subject to the express provisions governing review and cannot be invoked to circumvent the prohibition or to override a statutory provision.

LEGAL SIGNIFICANCE

Directly useful to anyone with matters that moved to the Federal Constitutional Court on the Twenty-Seventh Amendment, and a clear warning about a common manoeuvre. The Court draws the line precisely: where an order is challenged for an independent procedural defect affecting the proceedings, recall may legitimately arise; where the relief sought can be granted only by revisiting the reasoning or conclusion of the Bench on the merits, the application is a further review however it is styled. Three practical points. First, 'final disposal' in Order XXVII Rule 8 includes a dismissal as infructuous — there is no requirement that every ground have been adjudicated. Second, the presence of an Advocate-on-Record defeats an argument that the party was unrepresented when counsel sought adjournment, so the AOR must be in a position to address the consequences of anything conceded or recorded. Third, inherent-power provisions cannot be pressed into service to reopen a concluded review, and Order XXXV Rule 6 is available only in a matter competently filed and gives no independent right to initiate proceedings. Note also the confirmation, consistent with Razia Aslam, that the Registrar's objection was in conformity with the Rules.

LEGAL PROPOSITIONS (VERBATIM)

— *Its character must be determined from the grounds urged and the relief sought, rather than its designation or the provisions mentioned in its title.*

— *The provision refers to final disposal; it does not confine the prohibition to dismissal after adjudication of every ground raised in the first review.*

— *At the same time, the mere description of an application as one for 'recall' or 'restoration' is not determinative*

— *Nor can they be invoked to override or defeat an express provision of the statute.*

LEGAL PRINCIPLES EXPOUNDED

Where the relief sought can be granted only by revisiting the reasoning or conclusion of the Bench on the merits, the application assumes the character of a further review irrespective of its form.

Source: *Where, however, the relief sought can be granted only by revisiting the reasoning or conclusion of the Bench on the merits, the application assumes the character of a further review, irrespective of the form in which it is presented.*

Authority: *Order XXVII Rule 8 and Order X Rule 2, Supreme Court Rules, 2025 (as adopted)*

Read together, the bar on a second review and the prohibition on altering a pronounced judgment prevent a concluded review from being reopened by a subsequent application seeking substantive reconsideration.

Source: *Read together, these provisions prevent a concluded review from being reopened through a subsequent application seeking substantive reconsideration.*

Authority: *Order XXVII Rule 8 and Order X Rule 2, Supreme Court Rules, 2025 (as adopted)*

A rule preserving inherent powers may be pressed into service only in a matter competently filed before the Court and does not give an independent right to initiate proceedings.

Source: *Furthermore, the Rule 6 of Order XXXV (almost identical to Rule 6 of Order XXXIII of the Supreme Court Rules, 1980) can be pressed into service only in a matter which is competently filed before Court but it does not give an independent right to initiate proceedings.*

Authority: *Mehr Zulfiqar Ali Babu v. Government of the Punjab (PLD 1997 SC 11); Federation of Pakistan v. Supreme Judicial Council (PLD 2024 SC 698)*

OPERATIVE ORDER

Consequently, the civil miscellaneous appeal is dismissed and the office objection dated 03.07.2026 is maintained. Nothing in this order shall be construed as reconsideration of the merits of the judgment dated 17.09.2025 of the Supreme Court or the order dated 11.05.2026 of this Court. No order as to costs.

■ [View Full Judgment](#)

PAKISTAN PRISON RULES, 1978 RR. 140, 199, 212, 213, 215, 216, 217(ii); CONSTITUTION OF PAKISTAN, 1973 ARTS. 4, 9, 25 — THE CUMULATIVE EFFECT OF ALL REMISSIONS SHALL NOT REDUCE THE ACTUAL PERIOD OF IMPRISONMENT OF A LIFE CONVICT TO LESS THAN FIFTEEN YEARS; A REMISSION COMPUTED IN DEROGATION OF THE RULES CONFERS NO ENFORCEABLE RIGHT

Suba Khan v. Superintendent Central Prison Mach and others

PETITION DISMISSED; CONSOLIDATED JUDGMENT OF THE HIGH COURT OF BALOCHISTAN MAINTAINED; APPROVED FOR REPORTING

F.C.P.L.A. No. 833 of 2025, Federal Constitutional Court of Pakistan, Branch Registry Quetta (against the consolidated judgment dated 31.05.2025 of the High Court of Balochistan, Quetta in C.P. Nos. 93, 716, 937 of 2023 and 976 of 2024) · Bench: Rozi Khan Barrech and Syed Arshad Hussain Shah, JJ · Decided: Announced; detailed judgment uploaded 30.09.2026 · Uploaded: 30.09.2026

FACTS

The High Court of Balochistan, by consolidated judgment dated 31.05.2025, declared that remissions granted to the convicts in the cases before it had been illegally awarded without adherence to the mandatory procedural requirements of the Pakistan Prison Rules, 1978 and the Code of Criminal Procedure, 1898, and were null and void and liable to be recalled; directed that convicted prisoners serve at least two-thirds of their substantive sentence as mandated under Rule 217 unless a lawful and exceptional remission were granted; directed re-examination of the allocation of B-Class facilities and a province-wide report; held the issuance of nominal rolls recommending premature release without verification of eligibility to be arbitrary, discriminatory and unlawful and violative of Articles 4, 9 and 25; directed withdrawal of remissions granted in contravention of law and recalculation of sentences; and directed that future remissions and nominal rolls be maintained strictly in accordance with law, with disciplinary proceedings to be considered against officials who had facilitated unlawful remissions. The petitioner, a life convict, challenged that judgment. The record showed that at the time of preparation of his nominal roll he had actually undergone 9 years, 4 months and 19 days of imprisonment, yet remissions amounting to 15 years, 7 months and 18 days had been credited to his account, leaving only 5 months and 23 days to be served.

LEGAL ISSUE

Whether remissions credited to a prisoner sentenced to imprisonment for life may operate so as to reduce the actual period of incarceration below the statutory minimum prescribed by Rule 217(ii) of the Pakistan Prison Rules, 1978; and whether a remission computed in derogation of the Rules confers an enforceable legal right.

HOLDING

The petition was dismissed. The modern philosophy of punishment recognises reformation and rehabilitation as important objectives, and the remission regime in the Pakistan Prison Rules, 1978 reflects that approach by creating an incentive-based mechanism through which prisoners may earn reductions for good conduct, industry and educational advancement. The law nevertheless maintains a careful balance between the rehabilitative interests of the prisoner and the societal interest in ensuring that judicially imposed sentences retain their deterrent, retributive and denunciatory force; executive clemency and remission must operate within the framework prescribed by law. The remission system is neither absolute nor unregulated: while Rules 199, 212, 213, 215 and 216 enable prisoners to become eligible for remission, Rule 217 expressly circumscribes the extent to which remissions may operate, and in the case of a prisoner sentenced to imprisonment for life Rule 217(ii) unequivocally mandates that the cumulative effect of all remissions shall not reduce the actual period of imprisonment to less than fifteen years. That restriction is mandatory and admits of no exception save where the sentence is lawfully altered in the exercise of constitutional or statutory powers by the competent authority. The computation reflected in the petitioner's nominal roll was prima facie inconsistent with the governing scheme and had the practical effect of reducing his actual incarceration substantially below the statutory minimum, defeating the legislative intent. A remission granted or computed in derogation of the express provisions of the Prison Rules cannot confer an enforceable legal right, nor could the Court lend its imprimatur to administrative action travelling beyond the authority conferred by law.

LEGAL SIGNIFICANCE

Immediately useful wherever premature release is in issue, and a judgment prison authorities will be expected to act upon. Its operative rule is simple and hard-edged: however earned, remissions cannot bring a life convict below fifteen years of actual imprisonment, and the figure in the nominal roll is to be tested against that floor. The decision also endorses a series of systemic directions — verification of eligibility before a nominal roll recommending premature release is issued, withdrawal and recalculation where remissions were unlawfully granted, scrutiny of B-Class allocations, and consideration of disciplinary proceedings against officials who facilitated unlawful remissions — which gives it an administrative reach beyond the petitioner. Two further points are worth noting in argument. First, the Court frames the question as one of legality rather than mercy: judicial sympathy cannot override statutory commands, particularly where the Legislature has consciously prescribed safeguards so that a life sentence retains its substantive penal content. Second, the only route out of the Rule 217(ii) floor is a lawful alteration of the sentence by the competent authority exercising constitutional or statutory powers — not an administrative computation.

LEGAL PROPOSITIONS (VERBATIM)

- *Under the Pakistani legal framework, the remission system is neither absolute nor unregulated.*
- *This statutory restriction is mandatory in nature and admits of no exception save where the sentence is lawfully altered in the exercise of constitutional or statutory powers by the competent authority.*
- *A remission granted or computed in derogation of the express provisions of the Prison Rules cannot confer an enforceable legal right, nor can this Court lend its imprimatur to an administrative action that travels beyond the authority conferred by law.*
- *Judicial sympathy cannot be permitted to override statutory commands*

LEGAL PRINCIPLES EXPOUNDED

In the case of a life convict the cumulative effect of all remissions shall not reduce the actual period of imprisonment to less than fifteen years.

Source: *In the case of a prisoner sentenced to imprisonment for life, Rule 217(ii) unequivocally mandates that the cumulative effect of all remissions shall not reduce the actual period of imprisonment to less than fifteen years.*

Authority: Rules 140 and 217(ii), Pakistan Prison Rules, 1978

The law maintains a balance between the rehabilitative interests of the prisoner and the societal interest in sentences retaining their deterrent, retributive and denunciatory force.

Source: *The remission regime embodied in the Pakistan Prison Rules, 1978, reflects this reformatory approach by creating an incentive-based mechanism through which prisoners may earn reductions in sentence on account of good conduct, industry, and educational advancement.*

Authority: Pakistan Prison Rules, 1978; Articles 4, 9 and 25, Constitution of Pakistan, 1973

The rule of law demands that executive authorities administer remissions faithfully within the limits prescribed by the Legislature.

Source: *The rule of law demands that executive authorities administer remissions faithfully within the limits prescribed by the Legislature.*

Authority: Rule 217, Pakistan Prison Rules, 1978

OPERATIVE ORDER

Consequently, for the reasons recorded hereinabove, the instant petition is found to be without merit and is hereby dismissed.

■ [View Full Judgment](#)

Supreme Court of Pakistan

4 judgments

DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939 SS. 2(I) TO (VIII), 2(IX), 5; FAMILY COURTS ACT, 1964; CONSTITUTION OF PAKISTAN, 1973 ARTS. 4, 14, 25, 199 — SHIQAQ IS A GROUND RECOGNISED AS VALID FOR DISSOLUTION UNDER MUSLIM LAW AND FALLS WITHIN THE RESIDUARY PROVISION IN SECTION 2(IX); A FAMILY COURT CANNOT CONVERT A STATUTORY CLAIM FOR DISSOLUTION INTO KHULA WITHOUT THE WIFE'S CLEAR AND VOLUNTARY ELECTION

Mst. Zainab Bibi v. Muhammad Waseem and others (with Mst. Iram Naz Begum v. Fazal Khaliq and others)

PETITIONS CONVERTED INTO APPEALS AND PARTLY ALLOWED; DECREES MODIFIED TO SUBSTITUTE DISSOLUTION ON THE GROUND OF SHIQAQ FOR DISSOLUTION BY KHULA, AND THE CONSEQUENTIAL DIRECTIONS AS TO DOWER SET ASIDE; APPROVED FOR REPORTING

C.P.L.A. No. 57 of 2025 and C.P.L.A. No. 1350 of 2025 (converted into appeals), Supreme Court of Pakistan (against the judgments dated 07.11.2024 and 14.01.2025 of the Peshawar High Court, Abbottabad Bench in W.P. No. 853-A of 2024 and W.P. No. 707-M of 2020) · Bench: Shahid Waheed, Naeem Akhter Afghan, Muhammad Hashim Khan Kakar, Ishtiaq Ibrahim and Miangul Hassan Aurangzeb, JJ (order by Shahid Waheed, J) · Decided: 17.08.2026 · Uploaded: 07.10.2026

FACTS

In each of two family suits the wife sought dissolution of marriage on the ground of cruelty and, in the same proceedings, claimed maintenance, dower and dowry articles. Neither wife elected khula as an alternative basis. The Family Courts, following the procedure under the Family Courts Act, 1964, held cruelty not established; having found that reconciliation had failed, they nevertheless dissolved the marriages by khula and directed the wives to return or surrender the dower, partly allowing the remaining claims. In Mst. Zainab Bibi the appellate court modified the decree as to return of dower, the husband having already taken it back; in Mst. Iram Naz Begum the decree was maintained. The High Court restored the Family Court's decree in the first case and declined to interfere with the concurrent findings in the second. In Iram Naz Begum the principal grievance was that the husband had not disclosed at the time of marriage that he already had a wife and children, and the wife stated categorically that she would not resume matrimonial life even if provided maintenance and a separate residence. In Zainab Bibi the evidence showed persistent arguments and taunts culminating in a physical altercation between the wife's brother and the husband and thereafter in criminal proceedings between the parties. Repeated efforts at reconciliation before the Family Courts failed. On the question of the scope of section 2(ix), the Court sought the opinion of the Council of Islamic Ideology.

LEGAL ISSUE

Whether a Family Court may dissolve a marriage by khula where the wife has pleaded a statutory ground under the Dissolution of Muslim Marriages Act, 1939 and has neither sought nor consented to khula; and whether a condition of serious and continuing matrimonial rupture (shiqaq) constitutes a ground recognised as valid for dissolution under Muslim law within the residuary provision of section 2(ix).

HOLDING

The appeals were partly allowed. Khula and dissolution under the Act of 1939 are distinct legal avenues: section 2 confers a statutory right to dissolution upon proof of a prescribed ground, while khula is an independent right of the wife to seek release where continuation has become intolerable. Following Khurshid Bibi, Mst. Saima Khan and Dr. Faryal Maqsood, a suit for dissolution does not by itself amount to a suit for khula, and a court cannot convert the one into the other without the wife's clear and voluntary election, particularly where the conversion affects dower. The distinction is substantive: section 5 preserves the wife's right to dower where dissolution is under the Act, whereas khula ordinarily carries the financial consequences of surrender. The error was therefore one of law and jurisdictional character, not a procedural irregularity, and failure to establish cruelty did not authorise the court to manufacture an election of khula. On the further question, section 2(ix) is deliberately residuary. Having considered the opinion of the Council of Islamic Ideology — which does not substitute for judicial determination — verse 35 of Surah An-Nisa, and the competing views in Umar Bibi and Balqis Fatima, the Court preferred Balqis Fatima and held that where the factual requirements of shiqaq are established and fair procedure observed, shiqaq falls within section 2(ix). Shiqaq is not established by every quarrel or incompatibility; it requires a genuine and continuing rupture such that the essential purposes of marriage cannot realistically be fulfilled, coupled with the failure of reasonable efforts at reconciliation, and it is distinct from cruelty. On the evidence, taken cumulatively and without attributing exclusive blame, both marriages disclosed shiqaq. On the claims for maintenance and

dowry articles, Article 199 confers a jurisdiction of supervision and not a second appeal, and those findings were left undisturbed.

LEGAL SIGNIFICANCE

The most consequential family-law judgment in years, and one every practitioner in the field will need to absorb at once. Three things follow. First, the practice — extremely common — of dissolving a marriage by khula once the pleaded ground fails is now unlawful without the wife's express election, and decrees passed that way are vulnerable, together with the directions as to return of dower which flow from them. Second, shiqaq is available as a ground under section 2(ix), which gives a principled route to dissolution where the relationship has broken down but no statutory wrong is proved against either spouse — and, critically, without the wife surrendering dower, since the juridical foundation is not her release for consideration but an objectively established condition. The Court is careful to say this is not a judicially created doctrine of irretrievable breakdown: the jurisdiction remains controlled by section 2(ix), the requirements of Muslim law, the evidence and the obligation to attempt reconciliation, and the Family Court must distinguish an unhappy marriage from one in a state of shiqaq. Third, the judgment's insistence that a decree of dissolution should not be converted into a declaration of personal dishonour — that the court need not manufacture a culprit — reframes how these cases should be pleaded and argued. Note also the caution in paragraph 18: a decree founded on shiqaq cannot ordinarily be passed against a party who has had no fair opportunity to contest that basis, so in a fresh case the ground should be pleaded or put in issue.

LEGAL PROPOSITIONS (VERBATIM)

- *Article 199 confers a jurisdiction of supervision, not a second appeal.*
- *Supervision was not substitution, and certiorari was not an appeal in disguise.*
- *The High Court could correct what the law forbids; it could not replace what the law permits.*
- *manufacture an election of khula on behalf of the wife. She remains entitled to choose whether to pursue her statutory claim or, if she so elects, to seek khula upon its lawful terms.*
- *Shiqaq recognises the condition of the matrimonial relationship rather than requiring the Court to manufacture a culprit.*

LEGAL PRINCIPLES EXPOUNDED

A court cannot convert a claim for statutory dissolution into khula without the wife's clear and voluntary election, particularly where such conversion affects her dower rights.

Source: *that a suit for dissolution does not, by itself, amount to a suit for khula; that khula is an independent right of the woman; and that a court cannot convert a claim for statutory dissolution into khula without her clear and voluntary election, particularly where such conversion affects her dower rights.*

Authority: *Mst. Khurshid Bibi v. Muhammad Amin (PLD 1967 SC 97); Ibrahim Khan v. Mst. Saima Khan (PLD 2024 SC 645); Dr. Faryal Maqsood v. Khurram Shehzad Durrani (PLD 2025 SC 262)*

The wife's consent is not an empty procedural formality; it is the juridical election by which she chooses khula together with its legal consequences.

Source: *It constitutes the juridical election by which she chooses khula, together with its legal consequences.*

Authority: *Sections 2 and 5, Dissolution of Muslim Marriages Act, 1939*

Where the factual requirements of shiqaq are established and the safeguards of fair procedure satisfied, shiqaq is capable of constituting a ground recognised as valid for dissolution under Muslim law within section 2(ix).

Source: *Having considered the statutory language, the relevant principles of Muslim law and the jurisprudence, we hold that where the factual requirements of shiqaq are established, and the safeguards of fair procedure are satisfied, shiqaq is capable of constituting a ground recognised as valid for dissolution under Muslim law and therefore falls within the residuary provision contained in section 2(ix) of the Act of 1939.*

Authority: *Section 2(ix), Dissolution of Muslim Marriages Act, 1939; Mst. Balqis Fatima v. Najm-ul-Ikram Qureshi (PLD 1959 (W.P) Lahore 566); Al-Qur'an, 4:35*

Shiqaq is not established by every quarrel, disagreement, incompatibility or temporary estrangement, and must be distinguished from cruelty.

Source: *Shiqaq* is therefore not established by every quarrel, disagreement, incompatibility or temporary estrangement. It requires a genuine and continuing rupture of such character that the essential purposes of marriage cannot realistically be fulfilled, coupled with the failure of reasonable efforts at reconciliation.

Authority: Sections 2(viii) and 2(ix), Dissolution of Muslim Marriages Act, 1939

Khula proceeds from the wife's voluntary election and carries its financial consequences; shiqaq arises from an objectively established condition and does not depend on surrender of dower.

Source: *Shiqaq*, by contrast, arises from an objectively established condition of serious matrimonial breach and does not depend on the wife's surrender of dower or any benefit as consideration for her release.

Authority: Section 5, Dissolution of Muslim Marriages Act, 1939

OPERATIVE ORDER

For the foregoing reasons, these petitions are converted into appeals and are partly allowed in the above terms. The decrees of the Family Courts are modified only to the extent necessary to substitute dissolution on the ground of shiqaq under section 2(ix) of the Dissolution of Muslim Marriages Act, 1939, in place of dissolution based on khula, and to set aside the consequential directions concerning return, surrender or waiver of dower founded solely upon khula. The remaining findings, including those concerning maintenance and dowry articles, shall remain intact to the extent stated above. There shall be no order as to costs.

■ View Full Judgment

PAKISTAN WAPDA HYDEL GENERATION STAFF SERVICE RULES, 2018 — SENIORITY AND ELIGIBILITY FOR PROMOTION ARE SUBSTANTIVE, NOT PROCEDURAL; NEW RULES DETRIMENTAL TO VESTED OR ACCRUED RIGHTS OPERATE PROSPECTIVELY AND CANNOT UNSETTLE SENIORITY ALREADY ATTAINED

Chairman Water and Power Development Authority, WAPDA, Lahore v. Ijaz Ali Gul and others

TWENTY-FIVE PETITIONS DISMISSED AND LEAVE REFUSED; JUDGMENT OF THE FEDERAL SERVICE TRIBUNAL MAINTAINED; APPROVED FOR REPORTING

Civil Petitions for Leave to Appeal No. 4818 to 4842 of 2024, Supreme Court of Pakistan (against the consolidated judgment dated 29.07.2024 of the Federal Service Tribunal, Camp Office, Peshawar in Appeals No. 779 to 803(P)CS of 2019) · Bench: Muhammad Ali Mazhar, Musarrat Hilali and Irfan Saadat Khan, JJ (judgment by Muhammad Ali Mazhar, J) · Decided: 02.06.2026 · Uploaded: 30.09.2026

FACTS

The petitioner had maintained a combined seniority list of all Assistant Station Attendants in WAPDA Hydel North Region, Warsak, Peshawar. It thereafter resorted to separate seniority lists for Assistant Station Attendants working in the Operations and Maintenance Sections, in terms of new Rules promulgated on 30.09.2018 (issued by Office Memorandum dated 30.08.2018), the seniority under the Maintenance Section being further separated to include the mechanical, electrical, air-conditioning and instrument sections. The respondents pleaded before the Federal Service Tribunal that the separation had affected their promotion prospects, some juniors in the combined seniority having already been promoted while they waited. The Tribunal allowed the appeals, holding that the Rules of 2018 were to be implemented prospectively for those joining after promulgation, restoring the combined seniority list for those appointed and serving before, protecting the promotions already accorded to private respondents Nos. 4 to 14, and directing that the appellant be considered for promotion from the date his juniors were promoted with back benefits. Counsel for the petitioner supported the enactment of the Rules of 2018 but, as the Court recorded, could not justify how they could be implemented with retrospective effect so as to upset settled seniority.

LEGAL ISSUE

Whether service rules promulgated on 30.08.2018, which state that they shall come into force at once, may be applied retrospectively so as to disturb the seniority of employees which had been attained under the rules previously in force.

HOLDING

The petitions were dismissed and leave refused. Law may be categorised as substantive or procedural; procedure is merely machinery, a means to an end, whose object is to facilitate and not obstruct the

administration of justice. The foundational rule of interpretation is that laws and rules are presumed to operate prospectively unless unambiguously specified, a presupposition meant to protect settled rights, reflected in the maxim *nova constitutio futuris formam imponere debet non praeteritis*. Seniority and eligibility for promotion are equivalent to substantive rights and cannot be regarded as merely procedural; any new rules or amendments detrimental to vested or accrued rights, including the attainment of seniority, operate prospectively and cannot be brought into play to disturb settled and undisputed seniority attained under the previous rules. Upsetting settled seniority by antedating the application of rules also infringes legitimate expectation and renders the administrative action arbitrary, discriminatory and prejudicial. The Court observed that seniority is a valuable asset which plays a crucial part in building professional weightage, a pathway for progression and job security. It noted that the jurisprudence of the Supreme Court of India is at par, referring to T.R. Kapur, K. Narayanan, Dinesh Kumar Sharma and Uttaranchal Forest Rangers' Association.

LEGAL SIGNIFICANCE

A clear and quotable statement of a question that recurs in every service cadre whenever rules are restructured, and one that will be cited well beyond WAPDA. Its practical core is the characterisation of seniority and promotion eligibility as substantive rather than procedural: once that is accepted, the ordinary presumption against retrospectivity does the rest, and a department cannot rely on a 'shall come into force at once' clause to reach backwards. Three features repay attention. First, the Court treats the splitting of a combined seniority list into separate lists as an act which, applied to existing employees, operates retrospectively even though the rules are prospective in form — the test is effect on accrued rights, not the drafting. Second, legitimate expectation arising from a settled seniority list is given independent weight, and its disturbance is characterised as arbitrary and discriminatory. Third, the Court's protection of promotions already made to the private respondents while restoring the earlier list shows the practical way to unwind such a restructuring without creating fresh injustice. Advisers should note the Court's unusual metaphor for the effect on affected employees — a game of snakes and ladders — which captures why these cases attract judicial sympathy.

LEGAL PROPOSITIONS (VERBATIM)

- *The seniority of employees cannot be affected or disturbed by the retrospective application of newly enacted rules.*
- *Procedure is merely a machinery, a means to an end, and its object is to facilitate, not to obstruct the administration of justice.*
- *Neither can 2018 Rules put into motion to disturb or upset the settled seniority nor can it be applied retrospectively to shakeup the seniority of employees enjoying their seniority prior to the promulgation of new Rules.*

LEGAL PRINCIPLES EXPOUNDED

Laws and rules are presumed to operate prospectively rather than retrospectively unless unambiguously specified, a presumption which protects settled rights.

Source: *The foundational rule of interpretation is that the laws and rules are presumed to operate prospectively rather than retrospectively unless unambiguously specified. This presupposition or assumption is meant to protect the settled rights as a safety device.*

Authority: *Maxim nova constitutio futuris formam imponere debet non praeteritis*

Seniority and eligibility for promotion are equivalent to substantive rights and cannot be regarded merely as procedural matters.

Source: *The seniority and eligibility for promotion is equivalent and practically the same as substantive rights and cannot be regarded merely as a procedural matter.*

Authority: *Pakistan WAPDA Hydel Generation Staff Service Rules, 2018*

Upsetting settled seniority by antedating the application of rules infringes legitimate expectation and renders the administrative action arbitrary and discriminatory.

Source: *Upsetting or reversing settled seniority by antedating application of rules also infringes legitimate expectation and turns into administrative action arbitrary, discriminating and prejudicial to the employees*

Authority: T.R. Kapur v. State of Haryana (1986 Supp. SCC 584); Uttaranchal Forest Rangers' Association v. State of U.P. (2006 INSC 654)

OPERATIVE ORDER

We have no hesitation in our minds to hold that the learned Tribunal rightly held that 2018 Rules shall be applied with prospectivity. ... The learned Tribunal after considering the relevant facts allowed the appeal of the respondents which does not require any interference. These civil petitions are dismissed and leave is refused.

■ View Full Judgment

CUSTOMS ACT, 1969 SS. 2(S), 157(2), 181 AND FIRST PROVISIO, 196; S.R.O. 499(I)/2009 CL. (B) AND SERIAL NO. 2(F) OF THE TABLE — WHERE A CONVEYANCE FALLS WITHIN CLAUSE (B) OF S.R.O. 499, THE OPTION OF REDEMPTION UNDER SECTION 181 IS EXCLUDED ALTOGETHER AND NO QUESTION OF THE QUANTUM OR BASIS OF A REDEMPTION FINE ARISES

Collector of Customs, Model Customs Collectorate, Peshawar v. Shamsur Rehman

PETITION CONVERTED INTO APPEAL AND ALLOWED; ORDERS BELOW SET ASIDE TO THE EXTENT OF ALLOWING RELEASE OF THE VEHICLE AGAINST REDEMPTION FINE; VEHICLE HELD LIABLE TO OUTRIGHT CONFISCATION; APPROVED FOR REPORTING

Civil Petition No. 327-P of 2020 (converted into appeal), Supreme Court of Pakistan (against the order dated 16.04.2020 of the Peshawar High Court in Customs Reference No. 23-P of 2020) · Bench: Yahya Afridi, CJ, Naeem Akhter Afghan and Muhammad Shafi Siddiqui, JJ (judgment by Muhammad Shafi Siddiqui, J) · Decided: 17.08.2026 · Uploaded: 06.10.2026

FACTS

Goods were seized under the Customs Act, 1969 read with section 3(1) of the Imports and Exports (Control) Act, 1950, and the vehicle used for their transportation was seized under section 157. By Order-in-Original No. 477 of 2018 dated 13.12.2018 the adjudicating authority ordered outright confiscation of the goods while allowing the vehicle to be released against a redemption fine equivalent to 20% of its value. The Collector of Customs (Appeals) dismissed the respondent's appeal. The Customs Appellate Tribunal remanded for a fresh decision; upon remand the Collector (Appeals) maintained the Order-in-Original, holding that the vehicle had been used for the transportation of smuggled goods under section 2(s). On a second approach, the Tribunal by judgment dated 18.11.2019 maintained confiscation of the goods but modified the order so that the fine be calculated at 20% of the proportionate customs value of the offending goods rather than 20% of the value of the vehicle. The Peshawar High Court dismissed the Department's reference in limine. The vehicle had been intercepted on 09.12.2018, before the amendments to the notification introduced in 2024.

LEGAL ISSUE

Whether a conveyance falling within the class specified in clause (b) of S.R.O. 499(I)/2009 — a lawfully registered conveyance found carrying smuggled goods in false cavities or used exclusively or wholly for the transportation of offending goods under section 2(s) — may be released against payment of a redemption fine under section 181 of the Customs Act, 1969.

HOLDING

The appeal was allowed. Section 157(2) determines the liability of a conveyance to confiscation; section 181 concerns the availability of an option in lieu of confiscation and conditions it. The discretion under section 181 is not absolute, the first proviso empowering the Board to specify by order the goods or classes of goods in respect of which the option shall not be given — a power recognised in *Collector of Customs v. Wali Khan* (2017 SCMR 585). In exercise of that power the Board issued S.R.O. 499, clause (b) of which covers the class in question. The vehicle here was found being used exclusively for the transportation of smuggled goods covered by section 2(s) and seized under section 157, and therefore fell within clause (b); the option of redemption was not available, and the initial order allowing release against a fine was contrary to the statutory scheme and could confer no right of redemption. In the absence of any such option the question of determining the quantum or basis of the fine did not arise, and the Tribunal erred in proceeding to determine it. Reliance on Serial No. 2(f) of the Table did not assist, since that provision applies to a conveyance 'not covered under clause (b)'. The subsequent amendments of 2024, which rescinded a limited relaxation and inserted clause (ba), were noticed only as showing the later treatment of the scheme and were not applied.

LEGAL SIGNIFICANCE

Short, but decisive for a very large category of customs litigation in which vehicles seized with smuggled goods are routinely released on redemption fine. The judgment establishes that where clause (b) is attracted the inquiry stops: there is a statutory bar, the adjudicating officer and the Tribunal have no discretion, and arguments about whether the fine should be calculated on the value of the vehicle or on the proportionate customs value of the goods are beside the point because they presuppose an option that does not exist. Two practical consequences follow. First, an order releasing such a vehicle is a nullity in that respect and confers no right, so an owner cannot rely on it even if the Department did not appeal promptly. Second, the sequence matters in argument: the availability of redemption under section 181 must be established before any question of quantum is reached, and Serial No. 2(f) of the Table is unavailable by its own terms once clause (b) applies. The Court's careful treatment of the 2024 amendments — noticed but expressly not applied to a 2018 seizure — is also a useful model for handling intervening notifications.

LEGAL PROPOSITIONS (VERBATIM)

- *In the absence of any such option, the question of determining the quantum or basis of redemption fine did not arise.*
- *The initial order allowing its release against payment of redemption fine was thus contrary to the statutory scheme and could not confer any right of redemption upon the owner.*
- *Its application is, therefore, expressly excluded where the conveyance falls within clause (b).*
- *Section 157 is seemingly an enabling provision and determines the liability of a conveyance to confiscation, whereas section 181 concerns the availability of an option in lieu of confiscation.*

LEGAL PRINCIPLES EXPOUNDED

The discretion under section 181 is not absolute; the first proviso empowers the Board to exclude specified goods or classes of goods from the benefit of the option.

Source: *The discretion contemplated by section 181 is not absolute, as the first proviso empowers the Board to exclude specified goods or classes of goods from the benefit of such option.*

Authority: *Section 181 and first proviso, Customs Act, 1969; Collector of Customs v. Wali Khan (2017 SCMR 585)*

The question of the basis on which a redemption fine is to be calculated can arise only after the availability of redemption under section 181 has been established.

Source: *could arise only after establishing the availability of redemption under section 181. The Tribunal, therefore, erred in proceeding to determine the basis of the redemption fine*

Authority: *Section 181, Customs Act, 1969; S.R.O. 499(I)/2009*

OPERATIVE ORDER

In view of the above analysis and findings, this petition is converted into an appeal and the same is allowed. The impugned order of the High Court dated 16.04.2020, judgment dated 18.11.2019 passed by the Tribunal, judgment dated 27.08.2019 passed by the Collector of Customs (Appeals), Peshawar and order-in-original dated 13.12.2018 passed by the Deputy Collector of Customs (Adjudication), Peshawar are set aside to the extent of allowing release of the vehicle against payment of redemption fine, and in consequence thereof, the vehicle is held liable to outright confiscation falling in clause (b) of the SRO 499, as it stood at the relevant time.

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LIMITATION ACT, 1908 S. 3; CODE OF CIVIL PROCEDURE, 1908 O. VII R. 11, O. VI R. 17 — IT IS THE INHERENT DUTY OF THE COURT UNDER SECTION 3 TO EXAMINE LIMITATION WHETHER OR NOT IT IS RAISED, AND THE POWER TO REJECT A PLAINT OR DISMISS A TIME-BARRED SUIT DOES NOT DEPEND UPON AN APPLICATION BY THE DEFENDANT

Muhammad Islam Badshah and another v. Abdul Wahab Shah and others

PETITION CONVERTED INTO APPEAL AND PARTLY ALLOWED; TRIAL COURT DIRECTED TO DECIDE MAINTAINABILITY FIRST; ORDER OF THE DIVISION BENCH SET ASIDE TO THE EXTENT INDICATED; APPROVED FOR REPORTING

Civil Petition No. 675 of 2025 (converted into appeal), Supreme Court of Pakistan (against the order dated 06.02.2025 of the High Court of Sindh, Karachi in High Court Appeal No. 464 of 2024) · Bench: Muhammad Ali Mazhar, Musarrat Hilali and Irfan Saadat Khan, JJ (judgment by Muhammad Ali Mazhar, J) · Decided: 03.06.2026 · Uploaded: 07.10.2026

FACTS

A learned Single Judge of the High Court of Sindh, on the original side, took up the question of maintainability of the suit on his own motion — no application under Order VII Rule 11 CPC having been moved by any party — and, holding the suit barred by limitation, rejected the plaint by order dated 27.09.2024. On appeal, a Division Bench by order dated 06.02.2025 set aside the plaint-rejection order with directions that all applications, including that under Order VII Rule 11 CPC, be deemed pending and decided at the earliest, thereby linking the question of maintainability with a pending application for amendment of the pleadings under Order VI Rule 17 CPC. The matter stood transferred to the 12th Senior Civil Judge, Karachi (East), where it was renumbered as Suit No. 6892 of 2025. Before the Supreme Court the petitioners contended that the Division Bench had failed to appreciate that no application under Order VII Rule 11 had been moved and that the decision on maintainability was necessary before embarking upon the remaining controversy.

LEGAL ISSUE

Whether a court may examine and decide the question of limitation, and reject a plaint or dismiss a suit found to be time-barred, on its own motion and without a formal application by the defendant; and whether the question of maintainability may properly be directed to be heard together with an application for amendment of the pleadings.

HOLDING

The appeal was partly allowed. Section 3 of the Limitation Act, 1908 provides that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence; it is accordingly the inherent duty of the Court to delve into the question of limitation regardless of whether it is raised. The powers of the Court for rejection of a plaint do not always depend upon the filing of an application under Order VII Rule 11 CPC, and the powers conferred by section 3 of the Limitation Act are more potent, since a suit found barred by time may be dismissed outright rather than the plaint merely rejected. There is no bar under section 3 or Order VII Rule 11 upon the Court exercising these powers suo motu, without a formal application and even before issuing summons, to save judicial time and shield the parties from vexatious and misconceived litigation — though the Court must first discharge the duty of examining the matters specified in the Rule, must not permit piecemeal rejection where even one prayer is maintainable, and, in the case of mixed questions of law and fact, should allow the suit to proceed and determine the lis by preliminary issue or regular trial. On the facts, the trial Court had acted within its province in fixing the matter on its own motion, and the Division Bench's direction linking maintainability to the amendment application did not rest upon a correct exposition of the law.

LEGAL SIGNIFICANCE

A useful companion to the Lahore High Court's decision on Order VII Rule 11-A reported in the briefing of 29 September 2026: read together, the two establish that the defendant's route to rejection of a plaint is now the written statement rather than a separate application, while the Court's own power to act on limitation is untouched and indeed broader. The practical points are three. First, limitation is a matter the Court must raise itself; a defendant who fails to plead it is not thereby safe, and a plaintiff cannot rely on silence. Second, section 3 permits outright dismissal of a time-barred suit, which is a more complete disposal than rejection of the plaint and leaves nothing to be revived. Third, the question of maintainability should be decided independently, on the averments of the plaint and the facts pleaded as constituting the cause of action,

without being conflated with a pending amendment application — a direction to hear them together is itself an error. The judgment's restatement of the limits is equally important: no piecemeal rejection, and mixed questions of law and fact go to trial.

LEGAL PROPOSITIONS (VERBATIM)

- *Along these lines, it is the inherent duty of the Court under Section 3 of the Limitation Act, 1908 to delve into the question of limitation, regardless of whether it is raised or not.*
- *The powers of the Court for rejection of plaint do not always depend upon filing an application under Order VII, Rule 11 CPC.*
- *It is the responsibility of the Court to show the doors to a fundamentally flawed suit in order to save precious time of the Court from unnecessary litigation without conducting a mini-trial or looking at the written statement.*
- *However, the law does not permit piecemeal rejection.*

LEGAL PRINCIPLES EXPOUNDED

The law of limitation does not bestow a right but results in incapacitation after the lapse of the period permitted; the law aids those who are vigilant and not those who sleep over their rights.

Source: *The providence of the law of limitation does not bestow a right but results in incapacitation after the lapse of the period permitted for dispensing legal rights or culmination of claims which have dwindled by the efflux of time.*

Authority: Section 3, Limitation Act, 1908; maxim *Vigilantibus Non Dormientibus Jura Subveniunt*

There is no embargo upon the Court dismissing a suit or rejecting a plaint suo motu, without a formal application from the defendant, where it is barred by law.

Source: *There is no bar or embargo under Section 3 of the Limitation Act 1908 or under Order VII, Rule 11 CPC wherein the Court cannot dismiss the suit or reject the plaint in exercise of its suo motu powers or on its own initiative without a formal application from the defendant if it is barred by law.*

Authority: Section 3, Limitation Act, 1908; Order VII Rule 11, Code of Civil Procedure, 1908

In the case of mixed questions of law and fact the correct course is to allow the suit to proceed and determine the lis by preliminary issues or regular trial.

Source: *However, in the case of mixed questions of law and fact, the correct approach is to allow the suit to proceed to the written statement and discovery phases, determining the lis either by framing preliminary issues or through a regular trial with equal opportunities for both parties.*

Authority: Order VII Rule 11, Code of Civil Procedure, 1908

OPERATIVE ORDER

As a result of the above discussion, this Civil Petition is converted into an appeal and partly allowed. As a consequence thereof, the learned Trial Court is directed to first decide the question of maintainability of the Civil Suit in accordance with law after providing ample opportunity of hearing to the parties and then proceed further. The impugned order dated 06.02.2025, rendered by the learned Division Bench of the High Court of Sindh is set aside to extent of directions that the maintainability of the suit should be decided together with the application moved for amendment in the plaint.

■ [View Full Judgment](#)

Lahore High Court

4 judgments

PENSIONS ACT, 1871 S. 11; PAKISTAN ARMY ACT, 1952 S. 171; FAMILY COURTS ACT, 1964 SS. 13, 17; CODE OF CIVIL PROCEDURE, 1908 S. 60; WEST PAKISTAN CIVIL COURTS ORDINANCE, 1962 S. 3 — SECTION 11 OF THE PENSIONS ACT IS NOT ATTRACTED TO A FINAL MAINTENANCE DECREE OF A FAMILY COURT; MINOR DECREE-HOLDERS ARE NOT 'CREDITORS' AND MAINTENANCE IS NOT AN ORDINARY DEBT

Muhammad Latif v. Additional District Judge and others

REFERENCE ANSWERED; CONSTITUTIONAL PETITION DISMISSED; EXECUTING COURT DIRECTED TO PROCEED EXPEDITIOUSLY AND, AS FAR AS PRACTICABLE, TO CONCLUDE EXECUTION WITHIN THIRTY DAYS; APPROVED FOR REPORTING

Writ Petition No. 71801 of 2019, Lahore High Court, Lahore (2026 LHC 6545) · Bench: Malik Waqar Haider Awan and Malik Javid Iqbal Wains, JJ (Division Bench on a reference by the learned Single Judge in Chambers) · Decided: Signed 01.10.2026 · Uploaded: 06.10.2026

FACTS

Respondent No. 3 instituted a suit for dissolution of marriage and recovery of dowry articles, while respondents Nos. 4 and 5, the petitioner's minor children, sought maintenance. The suits were consolidated and decided on 22.01.2014, the petitioner being directed to pay maintenance of Rs. 3,000 per month for each child from institution until marriage or change in lawful custody, with a 10% annual increase, together with a decree for dowry articles excluding gold jewellery valued at Rs. 248,570. Cross-appeals were dismissed on 28.02.2015 and the decree attained finality. In execution the Family Court issued non-bailable warrants of arrest and proceeded towards attachment of the amount in the petitioner's pension account; his application for cancellation of the warrants and release of the pension was dismissed on 17.09.2019. The learned Single Judge in Chambers noticed two apparently conflicting reported views of the Court — *Mst. Rehana Rehman v. Family Judge* (2011 CLC 1040), disallowing attachment of the pension of a retired Army official, and *Najeeb Ahmad Abbasi v. M.A.G.* (PLD 2011 Lahore 334), taking a different view as to the salary of a serving officer — and referred the matter for authoritative determination.

LEGAL ISSUE

Whether the pension of a retired Army official judgment-debtor can be attached in execution of a final decree for maintenance passed by a Family Court, notwithstanding the protection available to pension under section 11 of the Pensions Act, 1871 and section 171 of the Pakistan Army Act, 1952 as well as the Code of Civil Procedure, 1908.

HOLDING

The reference was answered by holding that section 11 of the Pensions Act, 1871 is not attracted to a final maintenance decree passed by a Family Court in favour of minor children. The expression 'creditor' essentially concerns a creditor-debtor relationship arising from an enforceable debt or monetary obligation, of which a person who has lent or advanced money is the ordinary example; a child asserting a parental right to maintenance does not occupy that position, and a Family Court decree is juridically distinct from an ordinary money claim. Section 171 of the Pakistan Army Act, 1952 refers in terms to the 'pay and allowances' of a person subject to that Act, whereas the present case concerns the pension of a retired official; and in referring to 'any civil or revenue court' the legislature did not include the Family Court, which is a special Court constituted under the Family Courts Act, 1964 and is not among the classes of civil courts listed in section 3 of the West Pakistan Civil Courts Ordinance, 1962. The father's obligation finds express recognition in Surah Al-Baqarah, Ayat 233, and the constitutional framework in Articles 2 and 2-A reinforces the approach; the right of maintenance belongs to the minor child and the corresponding obligation rests upon the father, and the two cannot be equated with an ordinary commercial or monetary claim between creditor and debtor. The decree having attained finality and being executable under section 13 of the Family Courts Act, 1964, the petitioner could not claim immunity from execution merely because he is a pensioner.

LEGAL SIGNIFICANCE

An authoritative resolution of a conflict that had left executing courts in Punjab without clear guidance, and a judgment of real practical consequence for the enforcement of maintenance decrees — which fail in practice far more often for want of an attachable asset than for want of a decree. The reasoning is portable. The pivot is the characterisation of the decree-holder: a minor claiming maintenance is not a creditor and the liability is

not a debt, so the protective provisions, which are framed around the creditor-debtor relationship, simply do not engage. The Court's textual point on section 171 of the Army Act — that it speaks of pay and allowances, not pension, and of civil or revenue courts, not Family Courts — is equally usable, as is the structural observation that the Family Court is a special forum outside the classes listed in section 3 of the Ordinance of 1962, with section 13 of the Family Courts Act providing its own machinery and section 17 excluding the technical application of the Code. Practitioners should note the direction that execution be concluded, as far as practicable, within thirty days, and the Court's invocation of the Qur'anic obligation of the father as reinforcing rather than displacing the statutory analysis.

LEGAL PROPOSITIONS (VERBATIM)

- *Therefore, a child asserting a parental right to maintenance does not occupy the position of an ordinary creditor. A family court decree is juridically distinct from an ordinary money claim.*
- *The right of maintenance belongs to the minor child, whereas the corresponding obligation rests upon the father.*
- *The Family Court was, therefore, competent to enforce the final maintenance decree in accordance with Section 13 of the Family Courts Act, 1964 and the applicable legal framework.*
- *The mere assertion that the petitioner is receiving pension does not, by itself, invalidate the execution proceedings arising from a final maintenance decree.*

LEGAL PRINCIPLES EXPOUNDED

Section 11 of the Pensions Act, 1871 is not attracted to a final maintenance decree of a Family Court, and the maintenance liability is not an ordinary debt arising out of a debtor-creditor relationship.

Source: *The decree-holder minor children, while enforcing the father's legal obligation of maintenance do not fall within the expression "creditor" as contemplated by Section 11 and the maintenance liability does not constitute an ordinary debt arising out of a debtor-creditor relationship.*

Authority: *Section 11, Pensions Act, 1871; section 13, Family Courts Act, 1964*

Section 171 of the Pakistan Army Act, 1952 protects pay and allowances and refers to civil or revenue courts; it does not extend to the pension of a retired official or to the Family Court.

Source: *The legislature while mentioning "any civil or revenue court" did not include the "Family Court" within the expression employed.*

Authority: *Section 171, Pakistan Army Act, 1952; section 3, West Pakistan Civil Courts Ordinance, 1962*

The right of a minor child to maintenance and the father's corresponding obligation cannot be equated with an ordinary commercial or monetary claim.

Source: *The right of the minor child to maintenance and the corresponding obligation of the father cannot be equated with an ordinary commercial or monetary claim arising between a creditor and debtor.*

Authority: *Articles 2 and 2-A, Constitution of Pakistan, 1973; Al-Qur'an, Surah Al-Baqarah, Ayat 233*

OPERATIVE ORDER

For the foregoing reasons, the impugned order dated 17.09.2019 does not call for interference in constitutional jurisdiction. Consequently, the instant Constitutional Petition is dismissed. The learned Executing Court shall proceed with the execution expeditiously and shall adopt such mode or modes of execution as are lawfully available under the Family Courts Act, 1964 and the applicable legal framework. The execution proceedings shall, as far as practicable, be concluded within thirty days from receipt of a certified copy of this judgment.

■ [View Full Judgment](#)

FAMILY COURTS ACT, 1964 S. 17; CODE OF CIVIL PROCEDURE, 1908 O. XXXII; CONSTITUTION OF PAKISTAN, 1973 ART. 199 — THE RIGHT OF MAINTENANCE BELONGS TO THE MINOR AND NOT TO THE PARENT OR GUARDIAN; IT CANNOT BE WAIVED, SURRENDERED OR BARGAINED AWAY, AND A FAMILY COURT MAY NOT FIX MAINTENANCE ON CONSENT ALONE

Mst. Shazia Noreen and another v. District Judge and others

PETITION ALLOWED; JUDGMENTS AND DECREES OF BOTH COURTS BELOW SET ASIDE AND THE MATTER REMANDED TO THE FAMILY COURT TO DECIDE MAINTENANCE AFRESH; APPROVED FOR REPORTING

Writ Petition No. 39297 of 2026, Lahore High Court, Lahore (2026 LHC 6427) · Bench: Muhammad Usman Ghani Rashid Cheema, J · Decided: 02.10.2026 · Uploaded: 02.10.2026

FACTS

By judgment and decree dated 24.01.2026 the Family Court fixed the maintenance of the minor petitioner and her younger brother at a reduced rate of Rs. 30,000 per month each, solely on the basis of the consenting statement of their mother and guardian, who had stated on oath that she accepted that figure and had also abandoned her claims to delivery charges and dowry articles. In an earlier suit decreed on 12.06.2012, maintenance had been fixed at Rs. 50,000 per month per child with a 10% annual increase. The mother made the adverse statement without obtaining leave of the Court. The appeal was dismissed by the District Judge, Sargodha on 26.03.2026 on the footing that the statement was voluntary. The minor, suing through her mother, contended that the Family Court had erred in treating the statement as the exclusive criterion without independently assessing the needs and welfare of the minors and the financial capability and social status of the father. The father contended that the matter had been amicably settled through statements recorded on oath and that the mother could not resile, her conduct amounting to approbation and reprobation.

LEGAL ISSUE

Whether the parents or guardian of a minor can lawfully waive, surrender, relinquish, renounce or abandon the child's maintenance through a private agreement, out-of-court settlement, compromise or consenting statement in Court; and whether a Family Court may rely solely upon such a statement in fixing maintenance without independently assessing the minor's welfare and needs and the father's financial capability and social status.

HOLDING

The petition was allowed and the matter remanded. A minor is a person under legal disability placed under the special protection of the courts, and the jurisdiction exercised is in the nature of loco parentis. Maintenance of a child is a continuing legal, moral and religious obligation of the father, and the right of maintenance belongs to the minor and not to the parent or guardian. The rights of children are independent rights and cannot be treated as negotiable claims capable of being bartered or exchanged like commodities, even by warring parents; a mother acts only as guardian, custodian or next friend and does not become the owner of the right, so she possesses no authority to waive or abandon it. Any agreement or settlement purporting to waive, extinguish or diminish a child's right to maintenance is void and unenforceable against the minor, and any arrangement made by a guardian operating to the detriment of the minor is incapable of being enforced. Although the Code of Civil Procedure does not apply to Family Court proceedings save sections 10 and 11 by virtue of section 17, its principles may lawfully be borrowed to protect the interests of minors, and an arrangement of this kind required leave of the Court in terms of Order XXXII; entered into without leave, it is void against the minor. A determination of maintenance resting solely on parental consent is an abdication of the duty cast upon the Family Court, which was bound to make an independent assessment of the needs, interests and welfare of the minors and the financial capability and social status of the father, irrespective of and uninfluenced by the consenting statement.

LEGAL SIGNIFICANCE

A judgment that should change practice in every Family Court, because the course it condemns — fixing maintenance on the parents' agreed figure and recording it as a consent decree — is routine. Three propositions will be relied on. First, the ownership point: the right is the child's, the guardian is a trustee of it, and a settlement purporting to reduce or extinguish it is void against the minor regardless of how freely the parent entered into it; the father's approbation-and-reprobation argument fails for that reason. Second, the

procedural route: where a compromise affecting a minor is placed before the Family Court, leave under Order XXXII is required and the Court must record that the compromise is beneficial and in the best interest of the minor — the principles of the Code being available to be borrowed notwithstanding section 17. Third, the duty of independent assessment survives consent entirely, and a decree that does not disclose consideration of the minor's needs and the father's capacity and social status is liable to be set aside. The judgment's closing formulation is the one to quote to a reluctant court.

LEGAL PROPOSITIONS (VERBATIM)

- *Right of maintenance belongs to the minor and not to the parent or guardian.*
- *Parents may agree between themselves but they cannot bargain away what belongs to their child. In matters of maintenance, the child's welfare must speak louder than parental consent.*
- *It needs to be reiterated that the rights and welfare of minor children cannot be made hostage to the unlawful conduct, dispute or defences of adults.*
- *any arrangement made by guardian operating to the detriment of the minor is incapable of being enforced.*

LEGAL PRINCIPLES EXPOUNDED

A guardian possesses no authority to waive, surrender, relinquish, renounce or abandon the right of maintenance vested in a minor, and any agreement purporting to do so is void and unenforceable against the minor.

Source: *Therefore, she possesses no authority to waive, surrender, relinquish, renounce or abandon the right of maintenance vested in a minor. Any agreement, arrangement or settlement, even amongst the parents, purporting to waive, extinguish or diminish child's right to maintenance is void and unenforceable against the minor.*

Authority: *Muhammad Imran Baqir v. Mst. Zarnain Arzoo (PLD 2026 SC 170); Humayun Hassan v. Arsalan Humayun (PLD 2013 SC 557)*

No compromise or agreement can be entered into on behalf of a minor by the appointed guardian without leave of the Court, and if entered into without leave it is void against the minor.

Source: *Any arrangement, such as the one reached between parents in this case, requires leave of the Court in terms of Order XXXII CPC as no compromise or agreement can be entered into on behalf of the minor by the appointed guardian without the leave of the Court.*

Authority: *Order XXXII, Code of Civil Procedure, 1908; Muhammad Amjad Khan Afridi v. Shad Muhammad (PLD 2022 SC 27)*

Reliance upon parental consent without independent assessment is an abdication of the duty cast upon the Family Court by law.

Source: *and abdication of duty by the Family Court, cast upon it by the law, which cannot be countenanced.*

Authority: *Muhammad Asim v. Mst. Samro Begum (PLD 2018 SC 819); Arif Fareed v. Bibi Sara (2023 SCMR 413)*

OPERATIVE ORDER

In view of the above, this writ petition is hereby allowed. Both the Judgments & Decrees passed by Courts below are set aside and the matter is remanded to the learned Family Court to decide the question of minors' maintenance afresh keeping in view the needs, interest and welfare of the children involved and the financial capability and social status of their father in light of the principles of law laid down by the Superior Courts from time to time.

■ [View Full Judgment](#)

INCOME TAX ORDINANCE, 2001 SS. 22, 23, 65B, 76(10), 120(1), 122(5A), 133 — TAX CREDIT UNDER SECTION 65B IS A STATUTORY ASSISTANCE DIRECTLY RELATABLE TO THE ACQUISITION OF QUALIFYING PLANT AND MACHINERY AND FALLS WITHIN SECTION 76(10); IT MUST BE EXCLUDED IN DETERMINING THE COST OF THE ASSET FOR DEPRECIATION AND INITIAL ALLOWANCE

Kot Addu Power Company Limited v. Commissioner Inland Revenue and others

QUESTIONS ANSWERED IN THE NEGATIVE; REFERENCE APPLICATIONS DISMISSED; APPROVED FOR REPORTING

I.T.R. No. 49320 of 2021 and connected references, Lahore High Court, Lahore (2026 LHC 6413) · Bench: Khalid Ishaq and Muhammad Usman Ghani Rashid Cheema, JJ · Decided: 02.10.2026 · Uploaded: 02.10.2026

FACTS

The applicant, a public limited company deriving income from power generation, filed returns for tax years 2014 to 2017, treated as deemed assessments under section 120(1) of the Income Tax Ordinance, 2001. Upon examination the assessments were found erroneous and prejudicial to the interest of revenue and proceedings were initiated under section 122(5A). The applicant had claimed tax credit under section 65B on investment made in plant and machinery, while claiming depreciation and initial allowance under sections 22 and 23 on the cost of those assets without reducing the amount of the credit availed. By amended assessment order dated 01.01.2020 the Assessing Officer held that the credit was required to be subtracted from the cost of the assets for the purposes of computing depreciation and initial allowance. Appeals to the Commissioner (Appeals) and to the Appellate Tribunal Inland Revenue failed, the Tribunal holding by consolidated order dated 15.04.2021 that a simultaneous reading of section 76(10) with sub-sections (1) and (3) of section 65B showed the credit to be an assistance in respect of the acquisition of the asset on which no tax is chargeable, and therefore to be excluded from cost. The applicant contended among other things that Rule 8(8)(b) of the Third Schedule to the repealed Ordinance of 1979 is not *pari materia* with section 76(10), so that reliance on *Khalid Textile Mills* (2017 PTD 1642) was misplaced.

LEGAL ISSUE

Whether tax credit availed under section 65B of the Income Tax Ordinance, 2001 is to be excluded from the cost of the asset for the purposes of depreciation and initial allowance under sections 22 and 23 read with section 76(10); and whether the construction placed upon Rule 8(8)(b) of the Third Schedule to the repealed Ordinance of 1979 governs that question.

HOLDING

The questions were answered against the applicant. The emphasis under section 76(10) is upon the nexus of the assistance with the acquisition of the asset and not merely upon its source, and the provision is more encompassing than Rule 8(8)(b) of the Ordinance of 1979. The two provisions are accordingly not *pari materia*, and the enunciation in *Khalid Textile Mills* may not be considered binding in relation to the statutory provisions of the Ordinance of 2001. That conclusion is consistent with the settled principle relating to statutory reenactment: where the legislature reenacts statutory language which has already received a settled judicial construction without material alteration, the reenactment ordinarily carries with it the existing judicial meaning, but the premise disappears where the later enactment materially alters the language upon which the earlier interpretation rested. Here the change in the statutory formulation is substantive, and the controversy therefore fell to be decided upon the true import of sections 65B and 76(10) read with sections 22 and 23 rather than by importing the earlier construction. Nonetheless, and irrespective of whether *Khalid Textile Mills* was a governing precedent, the conclusion reached by the Tribunal was correct: the tax credit admissible under section 65B, being a statutory assistance directly relatable to the acquisition of the qualifying plant and machinery, falls within the contemplation of section 76(10) and is liable to be excluded in determining the cost of the asset for depreciation and initial allowance. The applicant's submission that cost could be retained without factoring in the credit already received was not tenable.

LEGAL SIGNIFICANCE

Of direct and immediate concern to every taxpayer that has claimed a section 65B credit on plant and machinery — a very large constituency in the power, manufacturing and industrial sectors — and it closes off a double-benefit argument that has been run repeatedly. The practical rule is that the credit reduces the cost

base, so depreciation and initial allowance are computed on the net figure. Two aspects of the reasoning have wider value. First, the Court's treatment of the precedent question is a model: it accepts that section 76(10) and the old Rule 8(8)(b) are not *pari materia* and that the earlier Supreme Court decision is therefore not binding on the point, yet reaches the same result on the current statutory language — so a litigant who successfully distinguishes an adverse authority still has to win on the text. Second, the statement of the reenactment principle, and of the circumstances in which it ceases to apply, is a clean formulation that will be useful whenever a court is invited to carry forward a construction placed upon a repealed provision. Note that the Court's emphasis is on nexus with acquisition rather than the source of the assistance, which is the test to apply to other forms of statutory support.

LEGAL PROPOSITIONS (VERBATIM)

- *The emphasis under the present provision is, therefore, upon the nexus of the assistance with acquisition of the asset, and not merely upon its source.*
- *We are of the considered opinion that the provisions contained in Section 76(10) of the Ordinance, 2001 are more encompassing as compared to provisions contained in Rule 8(8)(b) of the Ordinance, 1979*
- *Here, the change in the statutory formulation is substantive*

LEGAL PRINCIPLES EXPOUNDED

Where the legislature reenacts statutory language which has received a settled judicial construction without material alteration, the reenactment ordinarily carries the existing judicial meaning; the premise disappears where the later enactment materially alters the language upon which the earlier interpretation rested.

Source: *Where the legislature reenacts statutory language which has already received a settled judicial construction without material alteration, such reenactment ordinarily carries with it the existing judicial meaning. The premise disappears, however, where the later enactment materially alters the language upon which the earlier interpretation rested.*

Authority: Sections 65B and 76(10), Income Tax Ordinance, 2001; *Commissioner of Income Tax v. Khalid Textile Mills* (2017 PTD 1642)

Tax credit under section 65B is a statutory assistance directly relatable to the acquisition of the qualifying plant and machinery and is to be excluded in determining the cost of the asset.

Source: *the tax credit admissible under Section 65B of the Ordinance, 2001, being a statutory assistance directly relatable to acquisition of the qualifying plant and machinery, falls within the contemplation of Section 76(10) of the Ordinance, 2001 and is, therefore, liable to be excluded while determining the cost of the asset for the purposes of depreciation and initial allowance under Sections 22 and 23 of the Ordinance, 2001.*

Authority: Sections 22, 23, 65B and 76(10), Income Tax Ordinance, 2001

OPERATIVE ORDER

For what has been discussed above, the proposed questions above are answered in negative and this Reference Application is accordingly dismissed. ... Office shall send a copy of this order under seal of the Court to the Appellate Tribunal as per Section 133(8) of the Ordinance.

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INSURANCE ORDINANCE, 2000 S. 127; LIMITATION ACT, 1908 SS. 14 AND ART. 86(A) — TIME BONA FIDE SPENT BEFORE THE FEDERAL INSURANCE OMBUDSMAN ON A COMPLAINT OF MALADMINISTRATION IS NOT TIME CONSUMED BEFORE A WRONG FORUM AND CANNOT BE COUNTED TOWARDS LIMITATION FOR A PETITION TO THE INSURANCE TRIBUNAL

Mst. Kaneez Bibi v. M/s Jubilee Life Insurance Company Limited and others

APPEAL ALLOWED; JUDGMENT OF THE INSURANCE TRIBUNAL SET ASIDE AND THE MATTER REMITTED FOR DECISION OF ALL ISSUES ON THEIR MERITS; APPROVED FOR REPORTING

R.F.A. No. 84374 of 2023, Lahore High Court, Lahore (2026 LHC 6398) · Bench: Ahmad Nadeem Arshad and Justice Ms. Shireen Imran, JJ · Decided: 02.10.2026 · Uploaded: 02.10.2026

FACTS

The appellant's husband obtained life insurance policy No. 8097850 dated 13.12.2018 and died on 09.08.2019. The appellant, as beneficiary, lodged a claim which was repudiated by letter dated 30.01.2020. She approached the Federal Insurance Ombudsman and pursued that remedy; by order dated 17.11.2022 the Ombudsman recorded that the company had rejected the death claim on the basis of non-disclosure of ailment, relying on ESR and HCV laboratory reports, and had, on the Forum's advice, offered to pay the full paid premium of Rs. 200,000 on humanitarian grounds — an offer the complainant rejected, contending that the reports produced were fake. She filed her petition before the Insurance Tribunal on 13.02.2023. The respondents contested on limitation and on the merits, alleging concealment of a pre-insurance ailment. The Tribunal framed seven issues including limitation, concealment and entitlement, and evidence was produced; it then decided the matter only on limitation, holding the petition barred by sixteen days even reckoning from repudiation, and considered it unnecessary to decide the remaining issues.

LEGAL ISSUE

Whether the period bona fide spent by a claimant before the Federal Insurance Ombudsman is to be excluded in computing limitation for a petition to the Insurance Tribunal, and whether the claim could be terminated on limitation alone without adjudication of the remaining issues on their merits.

HOLDING

The appeal was allowed and the matter remitted. It was not disputed that the appellant invoked the remedy before the Insurance Ombudsman and remained before that forum for a considerable period, and the proceedings were not shown to have been instituted merely as a device to overcome limitation; initiated in 2020, they remained pending until 17.11.2022. Inaction on the part of the respondents amounted to maladministration within the meaning of section 127 of the Insurance Ordinance, 2000, so the appellant rightly approached the Insurance Ombudsman and the time spent before that forum cannot be termed to have been consumed before a wrong forum. When she refused the company's offer on the ground that the reports produced were fake, the controversy could not be resolved without the recording of evidence, and the Ombudsman rightly disposed of the matter upon her willingness to approach the Insurance Tribunal, which exercises civil jurisdiction over claims arising out of insurance policies; the distinction between the two jurisdictions itself required careful examination before penalising a claimant who had first pursued the statutory Ombudsman mechanism. The authority relied upon by the respondents was inapplicable, pertaining to the Wafaqi Mohtasib rather than to proceedings under section 127. Dismissal solely on limitation, without adjudication of the remaining issues despite the peculiar background, the acknowledgment made by the company and the bona fide proceedings before the Ombudsman, could not be sustained. The Court expressly declined to express any opinion on the appellant's ultimate entitlement or on the defence of non-disclosure.

LEGAL SIGNIFICANCE

Valuable to anyone advising on insurance claims, and more broadly wherever a claimant has pursued an ombudsman or other statutory grievance mechanism before litigating. The central holding is that proceedings before the Federal Insurance Ombudsman under section 127 are not proceedings before a wrong forum: the jurisdiction is directed at maladministration, the Tribunal's is civil and directed at the claim, and a claimant who moves sequentially between them is acting properly rather than sleeping on her rights. The practical consequence is that the period before the Ombudsman does not count towards limitation — which, on these

facts, converted a petition barred by sixteen days into one competently filed. Two further points. First, the Court distinguishes the Wafaqi Mohtasib line of authority as resting on a different statutory footing, which is the answer to the authority usually cited against such claimants. Second, the criticism of deciding a case on limitation alone, after framing seven issues and recording evidence, is of general application: where the remaining issues have been tried, they should be decided, so that a successful appeal on limitation does not require the whole exercise to be repeated.

LEGAL PROPOSITIONS (VERBATIM)

- *As inaction on the part of respondents amounts to maladministration, the appellant rightly knocked the doors of the Insurance Ombudsman in terms of section 127 ibid; thus, the time spent by her before said forum cannot be termed to be consumed before wrong forum.*
- *The proceedings were not shown to have been instituted merely as a device to overcome limitation.*
- *The distinction between the two jurisdictions itself required careful examination before penalizing a claimant who had first pursued the statutory Ombudsman mechanism and thereafter invoked the jurisdiction of the Tribunal.*

LEGAL PRINCIPLES EXPOUNDED

The period consumed before the Insurance Ombudsman in proceedings under section 127 cannot be included in reckoning the period of limitation for a petition to the Insurance Tribunal.

Source: *the same is inapplicable to the facts and circumstances of present case inasmuch as the referred case pertains to the Wafaqi Mohtasib whereas matter in this case remained pending before Insurance Ombudsman and that too in terms of section 127 ibid; thus, the period consumed before said forum cannot be included towards reckoning the period limitation.*

Authority: *Section 127, Insurance Ordinance, 2000; Shafaatullah Qureshi v. Federation of Pakistan (PLD 2001 SC 142) distinguished*

Where there is genuine ambiguity as to the correct forum and bona fide prosecution before another forum ensues, the time spent is liable to be excluded or condoned.

Source: *This Court held therein that, given the genuine ambiguity on the correct forum and the ensuring bona-fide prosecution before wrong fora, the time spent is liable to be excluded/condoned; additionally, equitable considerations in insurance matters may also lend support to condonation at the appellate stage.....*

Authority: *Section 14, Limitation Act, 1908; R.F.A. No. 10709 of 2020 (order dated 07.10.2025)*

OPERATIVE ORDER

For what has been discussed above, we find that dismissal of the appellant's petition solely on the question of limitation, without adjudication of the remaining issues despite the peculiar factual background, the acknowledgment made by the respondent-Company and the proceedings bona-fide pursued before the Insurance Ombudsman, cannot be sustained. The impugned judgment dated 21.11.2023 is consequently set aside. The matter is remitted to the learned Insurance Tribunal, Lahore, which shall decide all the issues on their own merits, on the basis of the evidence already available on record and, if considered necessary in accordance with law, such further evidence as may legitimately be permitted.

■ [View Full Judgment](#)

Sindh High Court

3 judgments

SINDH SALES TAX ON SERVICES ACT, 2011 SS. 1(2), 2(64), 2(71), 3(1) AND EXPLANATION, 3(2), 3(3), 63; CONSTITUTION OF PAKISTAN, 1973 ART. 141 — LIABILITY TURNS ON THE AMENDED DEFINITION OF THE CONNECTING FACTOR FROM 01.07.2017; IN REFERENCE JURISDICTION THE COURT CANNOT ENTERTAIN A CHALLENGE TO THE VIRES OF THE ACT

M/s Zafar Securities (Pvt.) Limited, Lahore v. Appellate Tribunal Sindh Revenue Board (DB-I), Karachi and others

REFERENCE NO. 183 OF 2025 DISMISSED; REFERENCE NO. 182 OF 2025 PARTLY ALLOWED, THE DEMAND SET ASIDE FOR TAX PERIODS BEFORE 01.07.2017 AND MAINTAINED THEREAFTER; ORDER OF THE APPELLATE TRIBUNAL MODIFIED ACCORDINGLY; APPROVED FOR REPORTING

Spl. Sales Tax Reference Applications No. 182 and 183 of 2025, High Court of Sindh at Karachi; 2026 SHC KHI 1877 · Bench: Mohammad Abdur Rahman and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: 01.10.2026 (heard 25.09.2026) · Uploaded: 01.10.2026

FACTS

The applicant is a private limited company carrying on business as a stockbroker. It holds a Trading Right Entitlement Certificate of the Pakistan Stock Exchange and is registered with the Sindh Revenue Board under tariff heading 9819.1000 of the Second Schedule, and is also registered with the Punjab Revenue Authority. Its case was that its business is conducted from its office at the LSE Building, Lahore for clients resident in the Punjab and elsewhere, and that it discharges sales tax on those services to the Punjab Revenue Authority. On scrutiny of its audited accounts the Assistant Commissioner (Unit-12), Sindh Revenue Board found that brokerage and commission receipts had not been declared in its Sindh returns. By Order-in-Original No. 1143 of 2022 dated 24.05.2022, sales tax of Rs. 32,522,793 was determined for FY 2016-17 to FY 2020-21, and by Order-in-Original No. 6207 of 2023 dated 14.12.2023, Rs. 10,743,108 for FY 2021-22, with penalty and default surcharge. The Commissioner (Appeals-II) upheld both orders on the footing that the brokerage transactions are executed and terminated through the Karachi Automated Trading System at the Pakistan Stock Exchange, Karachi. The Appellate Tribunal maintained the demands but set aside the penalty under section 43 and the default surcharge under section 44; that part was not brought in reference and attained finality. Ten questions were proposed in each reference, which the Court reframed into two.

LEGAL ISSUE

Whether stockbroker services provided from an office in Lahore to clients outside Sindh are taxable in Sindh by reason of the transactions being executed through the Karachi Automated Trading System at the Pakistan Stock Exchange; and whether the levy amounts to impermissible double taxation contrary to the constitutional scheme.

HOLDING

The first question was answered in two parts. For tax periods before 01.07.2017 it was answered in the negative, in favour of the applicant and against the Board, in terms of Summit Capital — a registered office in Sindh does not by itself make a service taxable unless the service is provided from it. For tax periods from 01.07.2017 onwards it was answered in the affirmative, against the applicant, both limbs of section 3(1) being satisfied when read conjunctively as Summit Capital requires, the applicant's liability for those periods arising from the amended definition rather than from its address. The residence of the applicant's clients in the Punjab or elsewhere does not take the case out of section 3(1), the Explanation making it applicable regardless of whether services are provided to resident or non-resident persons; and the deeming provision in section 3(3), treating offices in and outside Sindh as separate legal persons, is expressly confined to the purposes of section 3(2) and does not limit the scope of section 3(1). The second question was answered in the negative. The Tribunal is a creature of the Act and could not examine whether a provision exceeds provincial legislative competence, so a question of vires does not arise out of its order within section 63(1); the Court in reference jurisdiction is equally confined to answering what the law is, and can neither strike down a provision nor declare it ultra vires, such a declaration being available, if at all, in the constitutional jurisdiction. Whether the connecting factor is a sufficient territorial nexus in terms of Article 141, and how the competing claim of another Province under its own law is to be reconciled, fell outside the questions arising, and no opinion was expressed.

LEGAL SIGNIFICANCE

Of considerable importance to stockbrokers, and to any service provider operating across provincial lines, because it fixes 1 July 2017 as the dividing line and explains why. Before that date Summit Capital governs and a Sindh registered office is not enough; from that date the amended definition of the connecting factor in section 2(64) brings the service within section 3(1) where the transactions are executed through KATS in Karachi, notwithstanding that the office, the broker and the clients are all in another Province. Three points will be relied upon. First, the Explanation to section 3(1) disposes of any argument built on the residence of clients. Second, section 3(3)'s deeming of offices inside and outside Sindh as separate persons is confined to section 3(2) and cannot be used to narrow section 3(1) — a point frequently argued the other way. Third, and of general application beyond this Act, the Court's careful statement of the limits of reference jurisdiction: a challenge to the vires of the charging provision does not arise out of a Tribunal's order and must be taken, if at all, on the constitutional side. The grievance of double taxation between Sindh and the Punjab is expressly left open, with liberty preserved to pursue any remedy including before the appropriate inter-provincial forum — which is the route a taxpayer in this position must now take. The applicant was represented by Hassan Ali and Jahanzeb Sukhera, Advocates.

LEGAL PROPOSITIONS (VERBATIM)

- *We are conscious of the Applicant's grievance.*
- *and it is the Provincial Assembly that has chosen, through section 3 read with the amended section 2(64), the connecting factor that brings a service within its reach.*
- *We express no opinion on them, and nothing said here shall preclude the Applicant from pursuing any remedy available to it in law*

LEGAL PRINCIPLES EXPOUNDED

The residence of a service recipient outside the Province does not take the case out of section 3(1), the Explanation making it applicable whether services are provided to resident or non-resident persons.

Source: *First, the residence of the Applicant's clients in the Punjab or elsewhere does not take the case out of section 3(1), since the Explanation to that sub-section makes it applicable regardless of whether the services are provided to resident or non-resident persons.*

Authority: *Section 3(1) and Explanation, Sindh Sales Tax on Services Act, 2011*

The deeming provision treating offices in and outside Sindh as separate legal persons is confined to the purposes of section 3(2) and does not limit the scope of section 3(1).

Source: *Secondly, the deeming provision in section 3(3), which treats the offices in and outside Sindh as separate legal persons, is expressly confined to the purposes of section 3(2), as the Division Bench also noted, and does not limit the scope of section 3(1).*

Authority: *Sections 3(1), 3(2) and 3(3), Sindh Sales Tax on Services Act, 2011*

In reference jurisdiction the High Court cannot strike down a provision of law or declare it ultra vires the Constitution; a question of vires does not arise out of the order of the Tribunal.

Source: *A question of the vires of a statute therefore does not arise out of its order within the meaning of section 63(1), and this Court, sitting in its reference jurisdiction, is equally confined to answering what the law is and applying it; it can neither strike down a provision nor declare it ultra vires the Constitution, a declaration of that kind being available, if at all, in the constitutional jurisdiction of this Court.*

Authority: *Section 63, Sindh Sales Tax on Services Act, 2011; CIR v. Coca Cola Pakistan Ltd. (2022 PTD 1400)*

OPERATIVE ORDER

Special Sales Tax Reference Application No. 183 of 2025, which relates wholly to FY 2021-22, is dismissed. Special Sales Tax Reference Application No. 182 of 2025 is partly allowed, in that the demand under Order-in-Original No. 1143 of 2022 dated 24.05.2022, to the extent that it relates to tax periods before 01.07.2017, is set aside, and the remainder of the demand is maintained. The impugned order stands modified accordingly. There shall be no order as to costs.

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INCOME TAX ORDINANCE, 2001 SS. 4C, 20, 21(E), 34(1) AND (2), 133, 149, 221 — TUITION FEE COLLECTED IN ADVANCE OF THE SESSION IS NOT AN AMOUNT DUE UPON COLLECTION; A NON-REFUNDABLE ADMISSION FEE IS DERIVED WHEN ADMISSION IS GRANTED; SECTION 21(E) DOES NOT REACH A GRATUITY PAID DIRECTLY TO AN EMPLOYEE WHERE NO FUND EXISTS

Commissioner Inland Revenue, Zone-VI, Karachi v. M/s Foundation Public School (Pvt.) Limited, Karachi

REFERENCE ANSWERED AND DISPOSED OF; ORDER OF THE APPELLATE TRIBUNAL MODIFIED — DELETIONS AS TO TUITION FEE AND GRATUITY MAINTAINED, DELETION AS TO ADMISSION FEE SET ASIDE AND THAT ADDITION RESTORED; APPROVED FOR REPORTING

Income Tax Reference Application No. 163 of 2025, High Court of Sindh at Karachi; 2026 SHC KHI 1888 · Bench: Mohammad Abdur Rahman and Dr. Shah Nawaz Memon, JJ (judgment by Dr. Shah Nawaz Memon, J) · Decided: 05.10.2026 (heard 18.09.2026) · Uploaded: 05.10.2026

FACTS

The respondent operates a school. Additions were made to its income on three principal footings. The first concerned amounts collected in advance — tuition fee for a session yet to begin, and admission fee — which the Department treated as income derived in the year of collection under sub-sections (1) and (2) of section 34. The admission fee was asserted for the Department to be non-refundable, and that assertion was left uncontroverted; the same amount had been offered and taxed in tax year 2024, the assessment for which was not before the Court. The second concerned the disallowance under section 21(e) of a sum of Rs. 53,916,977, which the Appellate Tribunal found upon the material to represent gratuity actually disbursed to employees with tax deducted at source under section 149, the provision for gratuity of Rs. 21,005,452 having itself been added back in the return. The disallowance had been made under section 21(e) and under that provision alone. The Department relied upon Monnoowal Textile Mills. The Appellate Tribunal deleted the additions, and the Department brought this reference under section 133(1).

LEGAL ISSUE

Whether tuition fee collected in advance of the session to which it relates, and a non-refundable admission fee, are amounts due to the taxpayer upon collection within the meaning of sub-sections (1) and (2) of section 34; and whether section 21(e) disallows gratuity paid directly to employees where no gratuity fund exists.

HOLDING

The reference was answered in part each way. Tuition fee collected in advance of the session to which it relates is not, upon its collection, an amount due within the meaning of sub-sections (1) and (2) of section 34, and to that extent the deletion was justified. The admission fee stands differently: its non-refundable character having been asserted and left uncontroverted, the respondent's entitlement to it is complete upon the grant of admission and is conditioned upon nothing which the respondent has thereafter to do; it is accordingly derived in the tax year in which admission is granted and not in the later year in which the session begins, and the deletion of that addition could not be sustained. Because the same sum had been offered and taxed in tax year 2024, the Court noted that a charge upon it for two years would, upon this judgment, be a mistake apparent from the record of the later year within section 221, and that the officer giving effect to the judgment is expected to act so that the respondent does not bear tax twice. On gratuity, section 21(e) disallows a contribution made by the person to a fund that is not a recognised or approved fund; the subject of the clause is a contribution made to a fund, and where there is no fund and payment is made directly to the employee the clause is not attracted upon its own terms. Monnoowal Textile Mills concerned provisioning for gratuity and is upon a different footing. The Court expressly confined its decision to section 21(e) and expressed no opinion on whether the payments satisfy section 20(1) or any other clause of section 21.

LEGAL SIGNIFICANCE

A carefully reasoned judgment on the timing of income which will be relied on well beyond the education sector, wherever fees, subscriptions or charges are collected ahead of the period to which they relate. The distinction the Court draws is the useful one: the question is not when the money is received but whether the taxpayer's entitlement is complete, and entitlement is complete when nothing further remains for the taxpayer to do. On that test an advance tuition fee is not yet due, because the teaching is still to be delivered, whereas a non-refundable admission fee is earned the moment admission is granted. Practitioners should note how

much turned on the uncontroverted assertion of non-refundability — a point to address squarely in the reply to the show cause notice. The treatment of double taxation is also valuable: rather than leaving the taxpayer to bear tax twice because the later assessment was not before it, the Court identified section 221 as the machinery and directed that it be used, with the observation that the Ordinance provides the machinery and it is to be used. On gratuity, the holding is narrow but clean — section 21(e) is about contributions to funds, and a direct payment to an employee where no fund exists falls outside it, leaving admissibility to be tested under the general provisions.

LEGAL PROPOSITIONS (VERBATIM)

- *The Ordinance provides the machinery, and it is to be used.*
- *The subject of the clause is a contribution made to a fund. Where there is no fund, and payment is made by the employer directly to the employee, the clause is not attracted upon its own terms.*
- *Upon that finding the disallowance could not rest upon section 21(e), because there was neither a fund nor a contribution to one.*
- *It is right to define the scope of what we decide.*

LEGAL PRINCIPLES EXPOUNDED

A non-refundable admission fee is derived in the tax year in which admission is granted, the taxpayer's entitlement being complete and conditioned upon nothing it has thereafter to do.

Source: *As to the admission fee, its non-refundable character having been asserted for the applicant and left uncontroverted, the respondent's entitlement to it is complete upon the grant of admission and is conditioned upon nothing which the respondent has thereafter to do.*

Authority: *Section 34(1) and (2), Income Tax Ordinance, 2001*

Tuition fee collected in advance of the session to which it relates is not, upon collection, an amount due to the taxpayer.

Source: *Tuition fee collected in advance of the session to which it relates is not, upon its collection, an amount due to the respondent within the meaning of sub-sections (1) and (2) of section 34, and to that extent the deletion of the addition was justified.*

Authority: *Section 34, Income Tax Ordinance, 2001*

An assessee taxed on book profits which have accrued but not been received cannot be taxed upon the same sums when they are actually received in a later year of assessment.

Source: *an assessee taxed in respect of book profits which have accrued but have not been received cannot be taxed upon the same sums of money when they are actually received in a later year of assessment.*

Authority: *Section 221, Income Tax Ordinance, 2001*

OPERATIVE ORDER

The reference is answered as above and is disposed of accordingly. In terms of sub-section (5) of section 133 of the Ordinance, the order of the learned Appellate Tribunal shall stand modified to the following extent. The deletion of the addition on account of tuition fee collected in advance is maintained, as is the deletion of the disallowance of gratuity. The deletion of the addition on account of admission fee is set aside and that addition is restored, to the extent of such part of Rs. 166,994,556 as is found to be referable to the admission fee.

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FINANCIAL INSTITUTIONS (RECOVERY OF FINANCES) ORDINANCE, 2001 S. 3; LIMITATION ACT, 1908 ART. 164; CODE OF CIVIL PROCEDURE, 1908 O. IX R. 13, S. 151 — CONTRACTUAL MARK-UP AND COST OF FUNDS ARE DISTINCT IN NATURE AND LEGAL BASIS; AN AWARD OF COST OF FUNDS UPON DEFAULT DOES NOT EXTINGUISH A CONTRACTUAL ENTITLEMENT TO MARK-UP ACCRUED DURING THE CONTRACTUAL PERIOD

Pakistan Kuwait Investment Company (Pvt.) Limited v. Amtex Limited and others (with Amtex Limited and others v. Pak Kuwait Investment Company Limited)

FIRST APPEAL NO. 54 OF 2019 ALLOWED AND FIRST APPEAL NO. 63 OF 2019 DISMISSED; JUDGMENT AND DECREE MODIFIED SO THAT THE FINANCIAL INSTITUTION IS ALSO ENTITLED TO RECOVER THE AGREED MARK-UP FOR THE CONTRACTUAL PERIOD, WITH THE DECETAL AMOUNT TO BE RECOMPUTED BY THE BANKING COURT; APPROVED FOR REPORTING

First Appeal No. 54 of 2019 and First Appeal No. 63 of 2019, High Court of Sindh at Karachi; 2026 SHC KHI 1881, 1882 and 1873 · Bench: Muhammad Faisal Kamal Alam and Justice Ms. Sana Akram Minhas, JJ · Decided: Uploaded 30.09.2026 · Uploaded: 30.09.2026

FACTS

The dispute arose out of two lease facility agreements, the first providing for a lease period of 72 months and the second for 60 months from the date of disbursement. The Banking Court, by judgment dated 01.07.2019 and decree dated 06.07.2019, decreed the financial institution's suit and awarded cost of funds from the date of default until realisation of the decretal amount, but declined its separate claim for contractual mark-up on the ground that cost of funds had been awarded. By a separate order of the same date the Banking Court dismissed Amtex's application for restoration; that application, captioned under Order IX Rule 13 read with section 151 CPC, was required to be made within thirty days under Article 164 of the Limitation Act, 1908, computed from the date of the decree or, where the decree was not duly served, from the date of knowledge, and Amtex itself claimed to have acquired knowledge of the dismissal on 06.01.2017 while the restoration application was presented on 17.10.2017. The financial institution claimed mark-up only for the contractual period and did not claim mark-up beyond the period agreed; the award of cost of funds in its favour was not under challenge.

LEGAL ISSUE

Whether the award of cost of funds under section 3 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 from the date of default excludes a financial institution's separate claim to contractual mark-up which had accrued during the contractual period.

HOLDING

The financial institution's appeal was allowed and the customer's appeal dismissed. Contractual mark-up and cost of funds are to be distinguished: contractual mark-up represents the consideration agreed between the parties for the finance during the subsistence of the contract, whereas cost of funds is a statutory liability arising upon default under section 3 of the Ordinance. The two are distinct in their nature and legal basis and cannot be treated as interchangeable merely because a decree also carries cost of funds, and the award of cost of funds upon default does not by itself extinguish a contractual entitlement to mark-up that had accrued during the contractual period. The distinction finds support in authority: in *Asma Hassan v. Askari Bank Limited* the Supreme Court upheld the award of contractual mark-up up to the agreed repayment date and cost of funds thereafter; in *Habib Bank Ltd v. Karachi Pipe Mills Ltd* it was recognised that under the Ordinance the contractually chargeable mark-up remains recoverable while the power to award additional mark-up beyond the contracted period was replaced by the statutory regime of cost of funds; and the Peshawar High Court in *Muhammad Niqab* held that an award of cost of funds does not exonerate a customer from his contractual liability to pay mark-up. Here the financial institution claimed mark-up only for the contractual period, and the mere award of cost of funds could not justify refusal of that separate claim; the Banking Court therefore erred.

LEGAL SIGNIFICANCE

A clear statement of a question that arises in most recovery suits under the Ordinance and on which Banking Courts have not been consistent. The practical rule is now straightforward: mark-up for the contractual period and cost of funds from the date of default are cumulative, not alternative, because they answer to different legal sources — one contractual consideration for finance actually provided, the other a statutory

consequence of default. A financial institution which confines its mark-up claim to the contractual period, as this one did, is entitled to both, and a decree awarding only cost of funds is to that extent deficient. The converse discipline is equally important and worth noting when acting for a customer: the power to award additional mark-up beyond the contracted period was replaced by the cost-of-funds regime, so a claim for mark-up running past the agreed repayment date will not succeed. The judgment also contains a useful reminder on restoration applications, which are governed by Article 164 of the Limitation Act and run from the decree or, where it was not duly served, from the date of knowledge as the applicant itself asserts it.

LEGAL PROPOSITIONS (VERBATIM)

- *nature and legal basis and cannot, therefore, be treated as interchangeable merely because a decree also carries cost of funds.*
- *That approach, however, does not correctly distinguish between the two concepts.*
- *The mere award of cost of funds could not, however, justify the refusal of PKIC's separate claim for Mark-Up which had accrued during the contractual period.*

LEGAL PRINCIPLES EXPOUNDED

Contractual mark-up is the consideration agreed for the finance during the subsistence of the contract, whereas cost of funds is a statutory liability arising upon default under section 3 of the Ordinance.

Source: *Contractual mark-up represents the consideration agreed between the parties for the finance during the subsistence of the contract*

Authority: *Section 3, Financial Institutions (Recovery of Finances) Ordinance, 2001; United Bank Ltd v. Muhammad Amjad Hayat Khan (PLD 2025 Lah 425)*

Under the Ordinance the contractually chargeable mark-up remains recoverable, while the power to award additional mark-up beyond the contracted period was replaced by the statutory regime of cost of funds.

Source: *it was recognized that, under the FIO, the contractually chargeable mark-up remains recoverable, whereas the power to award additional mark-up beyond the contracted period was replaced by the statutory regime of cost of funds.*

Authority: *Asma Hassan v. Askari Bank Limited (2019 SCMR 1873); Habib Bank Ltd v. Karachi Pipe Mills Ltd (2006 CLD 842); Muhammad Niqab v. National Bank of Pakistan (2023 CLD 222)*

OPERATIVE ORDER

In view of the foregoing discussion, First Appeal No.54/2019 (instituted by PKIC for recovery of Mark-Up) is allowed, whereas First Appeal No.63/2019 (instituted by Amtex challenging the Impugned Judgment dated 1.7.2019 and Decree dated 6.7.2019, and the separate Order dated 1.7.2019 dismissing its Restoration Application) is dismissed. The Impugned Judgment and Decree are, accordingly, modified to the extent that PKIC shall also be entitled to recover the agreed Mark-Up for the contractual period. The decretal amount shall, accordingly, be recomputed by the learned Banking Court in terms of this Judgment.

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