MANDVIWALLA & ZAFAR
ADVOCATES

# CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

*Monday, 10 August 2026*

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Upload Window: 7-10 August 2026 (with 6 August LHC straggler)

FCC: 1 judgment | SC: 2 judgments | LHC: 1 judgment | IHC/SHC: no new entries

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*Exclusions and coverage notes: this issue sweeps the judgments uploaded between 7 and 10 August 2026, together with one Lahore High Court judgment uploaded on 6 August 2026 that appeared after the previous sweep had closed. (a) Supreme Court Civil Appeal No. 1443 of 2018 (Commissioner of Income Tax, Lahore v. M/s Sui Northern Gas Pipelines Ltd), uploaded in this window, was re-checked for a third time and remains a scanned image from which no machine-readable text can be extracted; it is again excluded and will be carried forward until a text-bearing version is published. (b) The Sindh High Court caselaw portal returned a Cloudflare 522 error throughout today's sweep and could not be scanned; any Sindh High Court judgments falling in this upload window will be caught in the next cycle. (c) The Islamabad High Court portal returned no results for this window. The Federal Constitutional Court item in this issue is the separately published dissenting note of Syed Arshad Hussain Shah, J. in C.P.L.A. No. 4245/2022; the majority judgment in the same matter was digested in the briefing of 23 July 2026 and is not repeated here.*

## Federal Constitutional Court of Pakistan

1 judgment

COMPULSORY SERVICE IN THE ARMED FORCES ORDINANCE 1971 S.9A; OIL AND GAS DEVELOPMENT COMPANY LIMITED (CONVERSION) ORDINANCE 2001 SS.4(1)(C) & 5; LIMITATION ACT 1908 S.23; SUPREME COURT RULES 1980 ORDER XXXIII RULE 6 & ORDER XV RULE 7 — A PETITION INSTITUTED AGAINST A PERSON ALREADY DEAD IS A NULLITY AB INITIO, AND NO ESTOPPEL OR LACHES RUNS AGAINST A STATUTORY ENTITLEMENT

### Dissenting Note of Syed Arshad Hussain Shah, J. in Managing Director, Oil and Gas Development Company Limited & others v. Dr. Capt. (R) Nusrat Hussain through Legal Heirs

DISSENTING NOTE; SHAH J. WOULD HAVE DISMISSED THE PETITION AS NOT MAINTAINABLE AND, ON THE MERITS, UPHELD THE JUDGMENT OF THE HIGH COURT OF SINDH — THE MAJORITY HAVING CONVERTED THE PETITION INTO AN APPEAL AND ALLOWED IT BY 2 TO 1; APPROVED FOR REPORTING

*Dissenting Note of C.P.L.A. No. 4245/2022 & C.M.A. No. 10808/2022 (separately published; majority judgment authored by Syed Hasan Azhar Rizvi, J. reported in the briefing of 23 July 2026) · Bench: Syed Arshad Hussain Shah, J. (dissenting); majority: Syed Hasan Azhar Rizvi, J. (authoring) with Rozi Khan Barrech, J. concurring · Decided: 10 June 2026 (Islamabad) · Uploaded: 07.08.2026*

#### FACTS

The respondent, Dr. Capt. (R) Nusrat Hussain, had while serving in the erstwhile Oil and Gas Development Corporation (OGDC) applied on 07.08.1994 for the benefit of section 9A of the Compulsory Service in the Armed Forces Ordinance, 1971, seeking that his previous service in the Armed Forces be counted for seniority and allied benefits. His representations were rejected, the last rejection culminating on 29.04.2011, whereafter he filed Constitutional Petition No. D-1850 of 2021 before the High Court of Sindh. He died on 22.09.2021 during the pendency of that petition, a fact recorded in paragraph 10 of the High Court's judgment dated 26.10.2022, which directed the respondents to award his service benefits to his family within two weeks. OGDCL then filed C.P.L.A. No. 4245 of 2022 naming the deceased as respondent. His legal heirs instituted contempt proceedings before the High Court on 04.05.2023, and on 16.04.2025 filed C.M.A. No. 2812 of 2025 under Order XXXIII Rule 6 of the Supreme Court Rules, 1980 seeking to be brought on record, expressly alleging that the petitioners had knowingly impleaded a dead person. At no stage did the petitioners apply for substitution or file an amended memo of parties.

#### LEGAL ISSUE

Whether a petition for leave to appeal instituted and prosecuted against a respondent who had already died, without substitution of his legal representatives, is maintainable at all; and, if the merits are reached, whether entitlement under section 9A of the Compulsory Service in the Armed Forces Ordinance, 1971 can be defeated by waiver, estoppel or laches, or by the conversion of OGDC into OGDCL.

#### HOLDING

Shah J. would have dismissed the petition in limine as not maintainable. A dead person is not a juristic entity capable of being impleaded, and a proceeding instituted against one is void ab initio unless cured by substitution in the manner prescribed by law. The petitioners were fully aware of the death — it was recorded in the impugned judgment, asserted in contempt proceedings and pleaded in C.M.A. No. 2812 of 2025 — yet never applied for substitution or amended the memo of parties. He would accordingly have held that the C.M.A. could not be allowed or even dilated upon, since the main petition was itself incompetent, and that all proceedings, orders and the short order were coram non judice and a nullity, being conducted against a dead person. Departing from the majority on the merits as well, he would have held section 9A, with its non-obstante clause and the mandatory expression 'shall be entitled', to confer a vested statutory right admitting of no employer discretion; that there can be no estoppel against a statute, so waiver, acquiescence or omission by the beneficiary cannot defeat it; that each rejection of the respondent's representations furnished a fresh cause of action and the continuing denial of a statutory benefit is a continuing wrong under section 23 of the Limitation Act, 1908, so laches did not bar the claim; and that OGDCL, by operation of sections 4(1)(c) and 5 of the Oil and Gas Development Company Limited (Conversion) Ordinance, 2001, is deemed to have taken over all liabilities and obligations of OGDC and cannot evade them. He would have dismissed the petition and upheld the judgment of the High Court.

### LEGAL SIGNIFICANCE

The note is the fullest recent Pakistani treatment of proceedings instituted against a deceased party, marshalling Pakistani, English and Indian authority from Mohun Chunder Koondoo and Rampratab Brijmobandas through Muhammad Yar (2013 SCMR 464) to Budh Ram (2010) 11 SCC 476, and drawing the crucial distinction between a lis against a sole dead defendant — a still-born nullity incapable of revival — and one against multiple defendants of whom only some are dead, where the defect is curable by bringing the heirs on record. It also carries a pointed procedural warning: an order simply recording 'order accordingly' on an application to bring legal representatives on record cannot cure an incurable defect in the main petition. On the merits it stands as the counter-position to the majority on limitation and successor liability — the majority treating the cause of action as having accrued in 1994 and the claim as stale, and holding OGDCL to owe no statutory obligation under section 9A, where the dissent treats the denial as a continuing wrong under section 23 of the Limitation Act and the Conversion Ordinance as transferring liability automatically by operation of law.

### LEGAL PROPOSITIONS (VERBATIM)

*— the instant p etition, having been instituted and prosecuted against a person who ha d already expired, without impleading or substituting his legal heirs and legal representatives in accordance with law, is not maintainable*

*— t here can be no estoppel against a statute*

*— The continued denial of the benefit amounts to a continuing wrong, thereby giving rise to a recurring cause of action until the statutory obligation is duly discharged.*

### LEGAL PRINCIPLES EXPOUNDED

**Proceedings instituted against a deceased person are a nullity in the eyes of law unless the defect is cured by substitution of his legal representatives in the manner prescribed by law; absent substitution the proceedings remain fundamentally incompetent.**

***Source:*** *It is a well - settled principle of law that proceedings instituted against a deceased person are a nullity in the eyes of law, unless the defect is cured in the manner prescribed by law through the substitution of the deceased by his or her legal representa tives.*

***Authority:*** *Muhammad Yar (deceased) through legal heirs v. Muhammad Amin (deceased) through legal heirs (2013 SCMR 464); Malik Bashir Ahmad Khan v. Qasim Ali (PLD 2003 Lahore 615); Hafiz Brothers (Pvt) Ltd. v. PICIC Ltd. (2001 SCMR 1); Mehar Muhammad v. Deputy Settlement Commissioner (1979 SCMR 182); Nasim Akhtar v. Abdul Rashid Khan (2009 SCMR 12); Mst. Dani v. Deputy Settlement Commissioner, Vehari (1990 SCMR 553)*

**Actio personalis moritur cum persona — a suit filed against a person already deceased is a nullity from its inception, and an order substituting the legal representative and allowing the suit to proceed is itself a nullity, whether or not the suit was brought bona fide and in ignorance of the death.**

***Source:*** *If a lawsuit is filed against someone who is already deceased, the suit is considered a nullity in the eye s of the law and cannot proceed.*

***Authority:*** *Rampratab Brijmobandas v. Gowrishankar Kashiram (per Mulla J.); Mohun Chunder Koondoo v. Azeem Gazee Chowkeedar (12 Suth WR 45); Veerappa Chetty v. Tindal Ponnen (ILR 31 Mad 86); Kiran Singh v. Chaman Paswan (1954) AIR 340 SC*

**A statutory right conferred in the public interest by a provision carrying a non-obstante clause and the mandatory expression 'shall be entitled' cannot be defeated by acquiescence, omission, delay, consent or alleged waiver; there is no estoppel against a statute.**

***Source:*** *It is by now a settled principle of law that t here can be no estoppel against a statute. A statutory right created in public interest cannot be defeated by acquiescence, omission, delay, consent or any alleged waiver on the part of the beneficiary.*

***Authority:*** *Section 9A, Compulsory Service in the Armed Forces Ordinance, 1971; 2021 SCMR 678*

**The continuing denial of a statutory benefit is a continuing wrong, not merely the continuing consequence of a completed act, so that a fresh period of limitation commences at every moment during which the breach subsists.**

***Source:*** *The continuing denial of a statutory benefit gives rise to a recurring cause of acti on, and therefore the claim cannot be rejected on the ground of delay.*

***Authority:*** *Section 23, Limitation Act, 1908; 2021 SCMR 678*

**On conversion, the successor company is deemed by operation of law to have taken over all contractual rights, licences, concessions, liabilities and obligations of its predecessor corporation, and cannot evade liabilities lawfully accrued against the predecessor.**

***Source:*** *The statutory language unequivocally provides that OGDCL shall be deemed to have taken over all contractual rights, licences, concessions, liabilities and obligations of the Corporation.*

***Authority:*** *Sections 4(1)(c) and 5, Oil and Gas Development Company Limited (Conversion) Ordinance, 2001*

**OPERATIVE ORDER**

*Shah J. recorded that the petition, having been instituted and prosecuted against a person who had already expired without impleading or substituting his legal heirs, suffers from an incurable legal defect going to the root of the proceedings and is dismissed on that ground alone, all proceedings taken in pursuance thereof being without lawful authority, coram non judice and a nullity in the eye of law, void ab initio, conferring no legal rights and creating no enforceable obligations. Even on the merits, for the reasons in paragraphs 7 to 13 of the note, the respondent is entitled to the benefits flowing from section 9A of the Ordinance of 1971 and OGDCL, as statutory successor of OGDC, is legally obliged to honour that entitlement. Resultantly, in his view the petition stands dismissed and the judgment of the High Court, being well reasoned and in accordance with law, is upheld. This is a dissent: by the majority short order of 10.06.2026 the petition was converted into an appeal and allowed by 2 to 1, the High Court judgment set aside and the constitutional petition dismissed. Approved for reporting.*

■ **View Full Judgment**

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## Supreme Court of Pakistan

2 judgments

INCOME TAX ORDINANCE 2001 SS.122(1), 122(5), 122(5A), 182, 184, 186, 238 & 239; INCOME TAX ORDINANCE 1979 (REPEALED); GENERAL CLAUSES ACT 1897 S.6; CONSTITUTION ART.189; SUPREME COURT (PRACTICE AND PROCEDURE) ACT 2023 — HORIZONTAL STARE DECISIS BINDS A BENCH OF CO-EQUAL STRENGTH, AND PENALTY PROVISIONS OF THE ITO, 2001, BEING SUBSTANTIVE, CANNOT REACH ASSESSMENTS COMPLETED UNDER THE REPEALED ITO, 1979

### Commissioner Inland Revenue (Legal) RTO, Rawalpindi v. Khadim Hussain & others

LARGER BENCH CONSTITUTED TO RESOLVE A CONFLICT BETWEEN CO-EQUAL BENCHES; ELI LILLY (2009 PTD 1392) REAFFIRMED AND ISLAMIC INVESTMENT BANK (2016 SCMR 816) OVERRULED; CIVIL APPEAL OF THE DEPARTMENT REFUSED; APPROVED FOR REPORTING

*Civil Appeal No. 2480 of 2016 (on appeal against the order dated 27.10.2014 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in ITR No. 45/2011) · Bench: Five-member Larger Bench: Aqeel Ahmed Abbasi, J. (authoring); Shahid Waheed, J.; Naeem Akhter Afghan, J.; Malik Shahzad Ahmad Khan, J.; Shakeel Ahmad, J. · Decided: Heard 20.02.2026; announced in open Court at Islamabad · Uploaded: 10.08.2026*

**FACTS**

Respondent No. 1 was a taxpayer within the jurisdiction of the Director General, Regional Tax Office, Rawalpindi. On information that he had purchased property on 07.09.1999 for Rs. 3,00,000 without filing a return or responding to a notice under section 114(4), the department initiated proceedings. After non-compliance with notices under sections 61 and 62, a notice under section 13(1)(aa) dated 28.06.2007 was served by registered post requiring him to explain the source of investment. On his continued non-appearance an ex parte assessment was framed under section 63 of the repealed Income Tax Ordinance, 1979, adding Rs. 3,00,000 for assessment years 2000-2001 to 2002-2003, together with a penalty under section 184 of the Income Tax Ordinance, 2001 read with section 111 of the repealed Ordinance. The CIT(A) upheld the addition but deleted the penalties by order dated 31.01.2008; the Income Tax Appellate Tribunal dismissed the department's second appeal, holding the penalties legally unsustainable under section 239; and the Lahore High Court, Rawalpindi Bench dismissed the department's reference on 27.10.2014. In the resulting civil appeal a three-member Bench, by order dated 14.01.2021, referred to a larger Bench the question whether penalties under sections 182, 184 and 186 of the ITO, 2001 are lawful in view of section 239(3), because two co-equal three-member Benches — in Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 PTD 1392) and Commissioner of Income Tax, Peshawar v. Messrs Islamic Investment Bank Ltd. (2016 SCMR 816) — had laid down conflicting rules.

### LEGAL ISSUE

Whether penalties under sections 182, 184 and 186 of the Income Tax Ordinance, 2001 are lawful in view of section 239(3) of that Ordinance in respect of assessments completed under the repealed Income Tax Ordinance, 1979; and, proprio motu, whether a subsequent Bench of co-equal strength may depart from the decision of an earlier co-equal Bench consistently with Article 189 of the Constitution and the doctrine of horizontal stare decisis.

### HOLDING

The larger Bench first addressed the precedential question raised proprio motu. It held that the doctrine of horizontal stare decisis binds a Bench of co-equal strength no less than the doctrine of vertical stare decisis binds smaller Benches, and that the Bench in Islamic Investment Bank had misconstrued the phrase 'be binding on all other courts in Pakistan' in Article 189 in treating the earlier co-equal decision in Eli Lilly as not binding. Where a subsequent co-equal Bench sees patent illegality or a shifted legal landscape, its only proper course is to seek constitution of a larger Bench (after the Supreme Court (Practice and Procedure) Act, 2023, through the three-member committee), not to write a contradictory judgment. On that ground the view in Eli Lilly was reaffirmed and the contrary view in Islamic Investment Bank overruled. On the substantive question, the Court held that sections 122(1), (5) and (5A) read with the amended saving mechanism in section 239(1) are not merely machinery or procedural because they are 'impregnated with adding to the liability of the taxpayer': they permit the reopening of assessments already finalised on or before 30.06.2002 and the creation of additional liability, and so are substantive and prospective. Distinguishing the case of an amendment to a subsisting law from that of an outright repeal and re-enactment, the Court held that a saving clause preserves existing rights and does not create new ones. Since sections 182, 184 and 186 impose pecuniary consequences that enlarge the legal consequences of the taxpayer's conduct and create an independent fiscal burden, they too are substantive and, absent express retrospective language, cannot be applied to assessments governed by the repealed ITO, 1979.

### LEGAL SIGNIFICANCE

This is the authoritative five-member restatement of horizontal stare decisis in Pakistan. It settles that a co-equal Bench which disagrees with an earlier decision must go to the Chief Justice, or now to the three-member committee under the Supreme Court (Practice and Procedure) Act, 2023, and cannot simply write a contrary judgment; a decision taken in disregard of that discipline is an impermissible departure and, on the reasoning in Qaiser, per incuriam. For revenue practice it removes the ten-year conflict between Eli Lilly and Islamic Investment Bank in favour of Eli Lilly, holds sections 122(1), (5) and (5A) prospective, and establishes that penalty provisions in a re-enacted taxing statute are substantive and cannot be applied to closed assessments under the repealed law. The judgment also supplies a workable test for the machinery/substantive divide: whether the provision is 'impregnated with the potential of adding to the liability of the taxpayer'.

### LEGAL PROPOSITIONS (VERBATIM)

*— the earlier judgments of a Bench of co - equal strength is not only binding upon the Bench es of smaller numeric strength but also upon the Bench es of co - equal strength*

*— On this account, the view expressed in Eli Lilly supra is reaffirmed and the contrary view taken in Islamic Investment Bank supra stands overruled.*

*— the penalties under S ections 182,184 and 186 of the ITO, 2001 are unlawful and legally unsustainable*

### LEGAL PRINCIPLES EXPOUNDED

**A subsequent Bench of co-equal strength is bound by the earlier decision of a co-equal Bench; horizontal stare decisis, no less than vertical stare decisis, is required to maintain judicial discipline, certainty and institutional integrity.**

***Source:*** *in order to maintain judicial discipline, certainty and institutional integrity in the judicial pronouncements in respect of a question of law , the subsequent Bench of co - equal strength must adhere to adopt the doctrine of vertical stare decisis as well as horizontal stare decisis*

***Authority:*** *Article 189, Constitution of the Islamic Republic of Pakistan, 1973; Adreshir Cowasjee v. K.M.C.A. (1999 SCMR 2883); Mst. Samrana Nawaz v. M.C.B. Bank Ltd. (PLD 2021 SC 581); Qaiser v. The State (2022 SCMR 1641); Central Board of Dawoodi Bohra Community v. State of Maharashtra (2005) 2 SCC 673*

**A co-equal Bench that perceives patent illegality or a shift in the legal landscape may not write a contradictory judgment; its only course is to request constitution of a larger Bench, now through the three-member committee under the Supreme Court (Practice and Procedure) Act, 2023.**

***Source:*** *it cannot simply write a contradictory judgment , the proper course of procedure is to refer the matter to the Hon'ble Chief Justice ( after promulgation of Practice and Procedure Act, 2023 to the concerned three - member committee) responsible for constitution of Bench es or a larger Bench a s well as roster sittings with the request to constitute a larger Bench to reconsider the question of law decided by an earlier Bench of co - equal strength*

***Authority:*** *Supreme Court (Practice and Procedure) Act, 2023; Mst. Samrana Nawaz v. M.C.B. Bank Ltd. (PLD 2021 SC 581)*

**A provision that permits the reopening of a completed assessment and the creation of additional tax liability is substantive, not machinery or procedural, and therefore operates prospectively only.**

***Source:*** *such amendments cannot be considered merely procedural or machinery in nature; rather, they are substantive, as additional tax liability is created against a taxpayer in respect of assessments completed and finalized under the repe aled ITO, 1979*

***Authority:*** *Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 PTD 1392); Molasses Trading & Export Co. Ltd. v. Federation of Pakistan (1993 SCMR 1905); Maxwell on Interpretation of Statutes (10th Ed., 1953, p. 228)*

**A saving clause on repeal preserves rights, remedies, proceedings and powers already in existence; it cannot be read so as to create new rights or to enlarge the scope of the new enactment.**

***Source:*** *the purpose of a saving clause is not to create new rights or liabilities, but merely to preserve existing rights, remedies, proceedings, and powers that had already come into existence under the earlier law*

***Authority:*** *Sections 238 and 239, Income Tax Ordinance, 2001; section 6, General Clauses Act, 1897*

**In a taxing statute an amendment that is penal in nature or increases the taxpayer's liability applies prospectively only, unless the amending law itself gives retrospective effect in express language.**

***Source:*** *It is a well - settled legal position that in a taxing statute, if an amendment is introduced which is penal in nature or increases the tax liability of a taxpayer, it applies prospectively for the tax year in which such amendment has been introduced and ca nnot be given retrospective effect, unless such retrospective effect is given through the amending law itself in express language.*

***Authority:*** *Commissioner of Income Tax v. Vatika Township Pvt. Ltd. (2015) 1 SCC 15 (five-member Constitution Bench, Supreme Court of India)*

**OPERATIVE ORDER**

*The question whether penalties levied under sections 182, 184 and 186 of the Income Tax Ordinance, 2001 are legally not maintainable was answered in the affirmative, and the department's Civil Appeal No. 2480 of 2016 was refused. The view expressed in Commissioner of Income Tax v. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 PTD 1392) was reaffirmed and the contrary view in Commissioner of Income Tax, Peshawar v. Messrs Islamic Investment Bank Ltd. (2016 SCMR 816) was overruled. Approved for reporting.*

**View Full Judgment**

KHYBER PAKHTUNKHWA CONSUMER PROTECTION ACT 1997 SS.2(C), 2(N), 11A, 12, 13, 15, 19 & 20; BENAZIR INCOME SUPPORT PROGRAMME ACT 2010; PUNJAB CONSUMER PROTECTION ACT 2005 S.28 — A RETAILER OR AGENT WHO IS HIMSELF THE SERVICE PROVIDER IS NOT A CONSUMER, AND A CONSUMER COURT THAT LACKS JURISDICTION ACTS CORAM NON JUDICE

## Muhammad Ishaq, Deputy Director, Benazir Income Support Programme v. Fardayaz Khan and others

CIVIL PETITION CONVERTED INTO AN APPEAL AND ALLOWED; JUDGMENTS OF THE CONSUMER PROTECTION COURT, BANNU AND OF THE PESHAWAR HIGH COURT, BANNU BENCH SET ASIDE AND THE COMPLAINT DISMISSED, WITH A DIRECTION TO BISP TO HOLD AN INQUIRY; APPROVED FOR REPORTING

*Civil Petition No. 5395 of 2025 (against the judgment dated 06.11.2025 passed by the Peshawar High Court, Bannu Bench, in Consumer Protection Appeal No. 173-B/2025) · Bench: Muhammad Ali Mazhar, J. (authoring); Musarrat Hilali, J. · Decided: 10.03.2026 (short order 10.03.2026; reasons recorded thereafter at Islamabad) · Uploaded: 08.08.2026*

### FACTS

The petitioner was Deputy Director, Benazir Income Support Programme (BISP), District Bannu, a statutory welfare initiative under the Benazir Income Support Programme Act, 2010, which does not disburse assistance directly but operates through designated banks. Respondent No. 1 claimed to have worked as a Point of Sale (POS) under a franchise agreement distributing BISP payments; BISP asserted it had no role in his selection and no contract, franchise agreement, supervision or administrative control over him. In May 2021 his ID was deactivated by Bank Alfalah. His complaint to the Wafaqi Mohtasib, Islamabad was dismissed and never challenged. Almost two years later he instituted a complaint under section 13 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 arraying seven respondents, including franchise operators, BISP officials, Bank Alfalah's Country Head (BISP Wing) and the petitioner in his official capacity, alleging misuse of authority, failure to respond to grievances and arbitrary blocking of his Retailer ID, without documentary evidence. The petitioner objected to maintainability. None of the complainant's witnesses had any official connection with BISP and none proved that the petitioner had directed the blocking. By judgment dated 01.07.2025 the Consumer Court nonetheless partially accepted the complaint and directed the petitioner and Bank Alfalah to restore the ID or give written reasons; the Peshawar High Court, Bannu Bench dismissed the appeal on 06.11.2025 on the sole ground that the ID had been blocked without notice.

### LEGAL ISSUE

Whether a person who operates as a Point of Sale retailer or agent in a payment-disbursement chain is a 'consumer' within sections 2(c) and 2(n) of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 so as to found a complaint under section 13; and whether the Consumer Court and the High Court were bound to decide the question of jurisdiction and maintainability before proceeding on the merits.

### HOLDING

The Court held that the complaint was not maintainable. On his own showing the respondent structured his grievance as a retailer or agent of the franchisees holding a POS ID, so that for all intents and purposes he was himself the service provider and not a service acquirer, and could not claim the benefit of the Act of 1997. No retailer agreement with BISP or its alleged franchisee was placed on record, no BISP beneficiary had approached the Consumer Court complaining of non-payment, and the list of POS agents for District Bannu compiled by BISP did not carry his name. This was not the ordinary case of a bank customer whose account was blocked without notice. Because the substratum of the complaint was defective from inception, the question of maintainability, which goes to the root of the case, should have been decided by the Consumer Court — even on its own motion — and, failing that, by the High Court, instead of non-suiting the petitioner solely on the ground that no notice had preceded the blocking. Where a court lacks jurisdiction, any order it passes is null and void. The Court also restated, following Pak Suzuki Motors, the strict limitation regime in consumer legislation.

### LEGAL SIGNIFICANCE

The judgment marks the outer boundary of consumer jurisdiction in Pakistan: the Act protects the acquirer of goods or services for consideration, not the intermediary in the distribution chain, so franchisees, retailers and POS agents cannot convert a commercial or agency grievance into a consumer complaint. It is equally significant for adjudicatory discipline — maintainability and jurisdiction go to the root of the case, must be decided first, may be taken up suo motu, and cannot be cured by consent or acquiescence; a High Court sitting in consumer appeal errs in confining itself to a natural-justice point while leaving jurisdiction unexamined. The judgment also collects, in one place, an unusually wide survey of comparative consumer jurisprudence, and reiterates the short limitation periods that govern consumer claims.

#### LEGAL PROPOSITIONS (VERBATIM)

— *If the court lacks the jurisdiction and authority, any order or judgment passed by it deems to be null and void.*

— *the question of maintainabili ty of lawsuit always go to roots of the case*

— *a complaint under this section shall be submitted within ten days of the sale, delivery or rendering of the service*

#### LEGAL PRINCIPLES EXPOUNDED

**A person who is himself the service provider — a retailer or agent in the distribution chain — is not a service acquirer and cannot claim the protection of consumer legislation.**

***Source:*** *he was himself a service provider as retailer of alleged franchisees and not as service acquirer to claim the benefit of Act of 1997*

***Authority:*** *Sections 2(c) and 2(n), Khyber Pakhtunkhwa Consumer Protection Act, 1997*

**Absent privity between the complainant and the opposite party there is no deficiency in service, and the opposite party cannot be made liable under consumer legislation; the existence of a contractual obligation is a sine qua non.**

***Source:*** *The Court held that when there is no privity between the complainant and the opposite party, the opposite party could not become liable under the Act.*

***Authority:*** *Janpriya Buildestate Pvt. Ltd. v. Amit Soni (2021 SC 1269); Indian Oil Corporation v. Consumer Protection Council, Kerala (1994) 1 SCC 397*

**Want of jurisdiction cannot be cured by consent or acquiescence; the court must decide the question of jurisdiction at the earliest stage, and an act done by a court without jurisdiction is coram non judice.**

***Source:*** *No Court has the right to decide any lawsuit which is beyond the purview of its jurisdiction and want of jurisdiction conveys an action beyond the domain earmarked to any particular Court or Tribunal which cannot be cured, even by consent or acquiescence of parties.*

***Authority:*** *Jameel Qadir v. Government of Balochistan (2023 SCP 274 = 2023 SCMR 1919); Huddersfield Police Authority v. Watson (1947) 2 All E.R. 193; Morelle Ltd. v. Wakeling [1955] 2 QB 379; Young v. Bristol Aeroplane Co. Ltd. (1944) KB 718*

**Limitation in consumer claims runs from the moment the consumer obtains knowledge that the product or service is defective or faulty, and the statutory pre-complaint notice procedure must be exhausted within that period.**

***Source:*** *when the consumer obtains knowledge of the defect or fault in the product or the service, the 30 - day limitation period stipulated under section 28 (4) of the Act commences*

***Authority:*** *Pak Suzuki Motors Company Ltd. v. Faisal Jameel Butt (2023 CLD 934); section 13(2), Khyber Pakhtunkhwa Consumer Protection Act, 1997*

#### OPERATIVE ORDER

*By the short order dated 10.03.2026 the civil petition was converted into an appeal and allowed. The complaint under section 13 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 was held not maintainable; the judgment dated 01.07.2025 of the Consumer Protection Court, Bannu and the judgment dated 06.11.2025 of the Peshawar High Court, Bannu Bench in Consumer Protection Appeal No. 173-B/2025 were set aside; and the complaint before the Consumer Court was dismissed. In the interest of justice the Director General (Cash Transfer), BISP, Islamabad was directed to hold an inquiry, afford respondent No. 1 ample opportunity of hearing, disclose the reasons for blocking his alleged POS Agent's ID, confront him with any complaint received against him, and pass an appropriate order within 45 days so that he may pursue an appropriate remedy in accordance with law. Approved for reporting.*

**View Full Judgment**

## Lahore High Court

1 judgment

CODE OF CIVIL PROCEDURE 1908 ORDER XX RULE 16 & S.96 — A SUIT FOR RENDITION OF ACCOUNTS LIES ONLY WHERE A STATUTORY OR FIDUCIARY RIGHT TO AN ACCOUNT EXISTS; A PURELY CONTRACTUAL RELATIONSHIP WILL NOT SUSTAIN IT

## Sheikh Saeed Ahmad v. Rukhsana Jabeen, etc

REGULAR FIRST APPEAL DISMISSED IN LIMINE; JUDGMENT AND DECREE OF THE TRIAL COURT AFFIRMED; APPROVED FOR REPORTING

*RFA No. 298 of 2025 (2026 LHC 4929) — Regular First Appeal (Final Decree) under section 96 CPC against the judgment and decree dated 06.10.2025 of the Civil Judge, Multan · Bench: Lahore High Court, Multan Bench: Muzamil Akhtar Shabir, J.; Syed Ahsan Raza Kazmi, J. · Decided: 11.02.2026 · Uploaded: 06.08.2026*

### FACTS

The appellant, a businessman with an import-export business in Tanzania and residing in Multan, sued the respondents for rendition of accounts and recovery of Rs. 5,63,83,805 as compensation. He pleaded a business relationship with Khalid Corporation of Khawaja Khalid Mahmood, the respondents' predecessor in interest, under a written agreement dated 26.12.2018; that of Rs. 40,56,500 payable to him only Rs. 38,51,500 had been paid, leaving Rs. 2,05,000 outstanding; that two containers of leather worth Rs. 64,38,480 had been sent against which only Rs. 38,51,500 was paid, leaving a default of Rs. 25,86,930; and that a container of cloth and bed sheets despatched from Multan to Tanzania was rejected by the Tanzanian customs authorities as substandard and returned, occasioning costs and damages which were never reimbursed, with consequent loss and damage to his reputation. The respondents, impleaded as legal heirs of the deceased Khawaja Khalid Mahmood, were proceeded against ex parte. The appellant testified as PW-1 with two supporting witnesses and produced documentary evidence Exh-P1 to Exh-P11, including the attested agreement, receipts, an inspection certificate, banking and Tanzanian tax and penalty documents, a bill of lading and a copy of a suit filed against him by the respondents. The Civil Judge, Multan dismissed the suit on 06.10.2025, giving rise to this Regular First Appeal.

### LEGAL ISSUE

Whether a suit for rendition of accounts is maintainable against the legal heirs of a contracting party where the relationship pleaded is contractual rather than fiduciary, and where no direct agreement, partnership or agency between the plaintiff and those heirs is proved.

### HOLDING

The Court held that the suit was not maintainable. Order XX, Rule 16 CPC merely regulates procedure and creates no substantive right; a suit for accounts lies only where the plaintiff already has a right to receive an account, stemming either from a statute or from a relationship fiduciary in character. The appellant produced no document evidencing a direct agreement with the respondents, his claim resting on an agreement with their predecessor in interest; the purported extension of contract dated 21.02.2019 was a photocopy never produced or exhibited and so could not be relied upon; and the respondents were neither partners nor agents of the appellant. The relationship pleaded was contractual, not fiduciary, and liability to render accounts — the basic foundation of such a suit — was therefore absent. The alternative plea of partnership failed for want of any document establishing partnership or agency, and the plaint and the depositions of the PWs were themselves silent as to any fiduciary relationship. The agreement Exh-P1 was unregistered and conferred no legal right beyond a right to seek enforcement. Finally, that the respondents had themselves filed a suit for recovery and rendition of accounts on 31.01.2020 did not assist the appellant, whose suit filed on 16.01.2023 appeared to be a counterblast; the pendency of the earlier suit could not supply conditions precedent that did not exist.

### LEGAL SIGNIFICANCE

The judgment is a compact restatement of the law on rendition of accounts in Punjab. It confirms that Order XX, Rule 16 CPC is purely procedural and confers no substantive right, so the plaintiff must first establish an independent statutory or fiduciary entitlement to an account — partner and partner, guardian and ward, principal and agent, trustee and beneficiary. A commercial contract, even one generating substantial unpaid claims, gives rise at most to a suit for recovery, not to a suit for accounts. The Court also confirms that an unexhibited photocopy cannot be relied upon at the appellate stage, that an unregistered agreement confers no right beyond a right to sue on it, and that the pendency of a mirror-image suit by the opposing party does not cure the absence of the conditions precedent — a useful answer to the 'counterblast' pleading. Dismissal in limine under section 96 CPC where the essential ingredients are absent is endorsed.

### LEGAL PROPOSITIONS (VERBATIM)

*— Rendition of accounts was normally confined to specific cases where relationship was of such a nature that the relief of rendition of accounts would only enable the plaintiff to assert his legal rights.*

*— for the purpose of maintainability of a suit for rendition of accounts, liability of the other party to render accounts was a basic foundation*

*— this appeal being devoid of any merit is dismissed in limine*

### LEGAL PRINCIPLES EXPOUNDED

**Order XX, Rule 16 CPC is procedural only; it creates no substantive right to seek rendition of accounts and applies where such a right already exists, whether by statute or by a relationship fiduciary in character.**

***Source:*** *Procedure provided in Order XX, Rule 16, C.P.C., would only apply where there already existed a right to seek rendition of accounts. Rendition of accounts was normally confined to specific cases where relationship was of such a nature that the relief of rendition of accounts would only enable the plaintiff to assert his legal rights.*

***Authority:*** *Order XX, Rule 16, C.P.C.; Messrs Irfan Industries (Pvt.) Limited v. Standard Chartered Bank (2017 MLD 312 Lahore = 2017 CLD 223 Lahore)*

**A liability to render accounts arises from a fiduciary relationship — partners of a firm, guardian and ward, principal and agent, trustee and beneficiary — and does not exist where the relationship between the parties is merely contractual.**

***Source:*** *Relationship of the parties, in the present case, was contractual in nature and not fiduciary, therefore the suit for rendition of accounts filed by appellant against the respondents was not maintainable.*

***Authority:*** *Muhammad Azam Khan v. Askari Leasing Limited (2014 CLD 462 Lahore); Hadi Hussain v. Officer Commanding 703 Pak Works Section (2019 YLR 2413); Town Committee, Juharabad v. Falak Sher (2003 CLC 71 Lahore)*

**A plaintiff suing for rendition of accounts on the basis of partnership must establish the partnership, the share of each member, profit or loss, the type of business, the duration of the partnership and the accounts.**

***Source:*** *he was required to establish existence of fiduciary relationship such as partnership or agency coupled with the fact that the respondents were legally bound to account to him, but no such document has been produced, which was a pre-requisite for seeking rendition of account*

***Authority:*** *Syed Tahir Hussain Shah v. Syed Saeed Anwar Shah (2013 CLD 630 Lahore)*

**An unregistered agreement confers no legal right save the right to seek its enforcement through a court of law, and a document neither produced nor exhibited in evidence cannot be relied upon at the appellate stage.**

***Source:*** *being merely an agreement does not confer any legal rights except a right to seek its enforcement through a court a law and without seeking enforcement from a court of law such an unregistered document has no value in the eye of law*

***Authority:*** *Exh-P1, agreement dated 24.12.2018 (unregistered); document dated 21.02.2019 (unexhibited photocopy)*

### OPERATIVE ORDER

> *The appellant having failed to prove, through cogent, solid and confidence-inspiring evidence, the ingredients required for rendition of accounts, and the findings of the trial court suffering from no misreading or non-reading of the record, illegality or jurisdictional defect, the appeal was found devoid of merit and dismissed in limine. Decree sheet was directed to be prepared accordingly. Approved for reporting.*

■ View Full Judgment