

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Muhammad Ali Mazhar
Justice Musarrat Hilali
Justice Irfan Saadat Khan

Civil Petition No.675 of 2025

Against the Order dated 06.02.2025
passed by the High Court of Sindh,
Karachi in High Court Appeal No.464 of
2024

Muhammad Islam Badshah and another ...Petitioner(s)

Versus

Abdul Wahab Shah and others ...Respondent(s)

For the Petitioner(s) : Mr. Yousuf Moulvi, ASC
(Via video-link from Karachi)

For the Respondent(s) : Mr. Munir Ahmad Malik, ASC a/w
Respondent No.1 (video-link, Karachi)

For Respondent No.4 Mr. Muhammad Asif Malik, ASC

Date of Hearing : 03.06.2026

Judgment

Muhammad Ali Mazhar, J.- This Civil Petition for leave to appeal is directed against the order dated 06.02.2025 passed by the learned Division Bench of the High Court of Sindh, Karachi in High Court Appeal No.464 of 2024.

2. According to the transient facts, the respondent No.1 and 2 filed a suit for declaration, permanent injunction, possession, distribution and partition including damages to resolve the wrangle over the House No.SUH-220, measuring 500 sq. yards situated in Army Officers Housing Colony, Askari-IV, Rashid Minhas Road, Gulistan-e-Jauhar, Karachi known as Brigadier Bungalows. When the aforesaid Civil Suit was fixed in the Court for hearing on 27.09.2024 for order as to maintainability of the

suit and for hearing of CMA No.12608 of 2024, the learned single judge first took up the question of maintainability of the suit and held that the suit was barred by limitation, therefore, the plaint was rejected. Being aggrieved, the respondent No.1 & 2/plaintiffs filed the High Court Appeal which was fixed for hearing on 06.02.2025 whereby the learned High Court set aside the plaint rejection order with the directions that all applications including under Order VII, Rule 11 of Civil Procedure Code (**CPC**) shall be deemed to be pending and be decided at the earliest.

3. At the very outset, learned counsel for the petitioners argued that the learned Division Bench failed to comprehend that there was no application moved under Order VII, Rule 11, CPC but Court on its own motion decided the question of maintainability of the suit for the reason that on the face of it, the suit was time barred. He further argued that the decision on maintainability of the suit was necessary before embarking upon further controversy. According to the learned counsel, the High Court in the appellate order wrongly linked up the application moved for amendment in the pleadings under Order VI, Rule 17 CPC with maintainability of the suit.

4. Quite the reverse, the learned counsel for the respondent No.1 & 2 argued that the High Court in its appellate order rightly directed the Trial Court to decide all the applications together which means the question of maintainability as well as the application for amendment in the pleadings.

5. The learned counsel appearing for the respondent No.4 argued that the controversy involved between the petitioners and respondent No.1 & 2 has nothing to do with the Cantonment Board Faisal.

6. Heard the arguments. The providence of the law of limitation does not bestow a right but results incapacitation after the lapse of the period permitted for dispensing legal rights or culmination of claims which have dwindled by the efflux of time. Section 3 of

the Limitation Act 1908 provides that subject to the provisions contained in Sections 4 to 25, every suit instituted, appeal preferred, and application made after the period of limitation prescribed therefore by the first schedule shall be dismissed, although limitation has not been set up as a defense. 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. At this juncture, it is quite relevant to quote a Latin maxim "*Leges vigilantibus non dormientibus subserviunt*" or "*Vigilantibus Non Dormientibus Jura Subveniunt*", which articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. Delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied. The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an even-handed manner.

7. The powers of the Court for rejection of plaint do not always depend upon filing an application under Order VII, Rule 11 CPC. The powers conferred under Section 3 of the Limitation Act are more potent and greater where if the suit is found barred by time, the Court may dismiss the suit and the matter is finally wrapped up rather than the rejection of plaint. 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. 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. So far as the question of rejection of the plaint is concerned, if the plain reading of the plaint demonstrates it is palpably vexatious or meritless, the Trial Court may exercise its power under Order VII Rule 11 CPC to culminate a sham litigation at the earliest stage if the plaint does not disclose an actionable legal right or injury which constituted a cause of

action; the suit is explicitly prohibited by any prevailing statute or law. The Court can exercise this power even before issuing summons to the other side to save judicial time and shield the parties from vexatious and misconceived litigation.

8. It is an age-old legal exposition that before ordering the rejection of a plaint, the Court must first discharge its onerous duty of examining whether the plaint discloses a cause of action; whether the relief claimed is undervalued, and if so, whether the plaintiff, on being required by the Court to correct the valuation within a fixed time, has failed to do so; whether the relief is properly valued but the plaint is written upon an insufficiently stamped paper, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a fixed time, has failed to do so; and whether the suit appears, from the statement in the plaint, to be barred by any law. The general philosophy is that ineffectual and unproductive lawsuits should be buried at the beginning to save the precious time of the court, which can be better utilized in addressing serious and genuine litigation. Simultaneously, Courts should not permit such trickeries aimed at delay. A meaningful reading of the plaint is required by the court as a staunch duty to reach a just conclusion about whether rejection is warranted within the stipulations and preconditions laid out in the Rule. If the lawsuit, on its face, is incompetent, not due to any formal, technical, or curable defect but because of an express or implied embargo imposed by law, it should not be allowed to encumber legal proceedings further. However, the law does not permit piecemeal rejection. If even one prayer in the plaint is found to be maintainable, the plaint cannot be rejected in parts. 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. The proper course is to frame issues and decide them on merits in light of the evidence. The court is duty-bound to ensure substantial justice between the parties and not render them remediless.

9. In the case at hand, it is an admitted position that the learned Trial Court on its motion fixed the matter for deciding the question of maintainability which was very much within its province. No application was filed by the other side, which crucial aspect perhaps escaped the attention of the learned division bench of the High Court while deciding the High Court Appeal. Secondly, in the impugned judgment, while remanding the matter for fresh hearing, the appellate Court directed to decide all pending applications, including application under Order VI, Rule 17 CPC which was moved for the amendments in the plaint. No doubt under Order VI Rule 17, the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties but at the same time, it is also a well-settled principle that the amendment in the pleading should not be in a nature which may change the complexion of the suit. The powers conferred under Order VI Rule 17 of CPC dealing with the amendment of pleadings both in plaint or the written statement are discretionary whereby the Court may allow amendments to ensure a fair trial and deliver complete justice if it is found necessary for the purpose of determining the real questions in controversy between the parties but amendment cannot be sought to completely alter the character or fundamental core of the case. The expression “changing the complexion of the suit” connotes fundamental and deep-rooted fill in for or reformation in the original character or foundation of the case. The overall and consistent jurisprudence evolved on the point of allowance of amendment in the plaint though seems to be permissive in order to resolve the real dispute or controversy but discretion is denied when by the looks of it, the amendment sought to be achieved may change the complexion of the suit. In essence, the amendments are permissible to shed light on or expand upon the existing case without restructuring its basic foundation or transmuting the identity of the suit.

10. Apparently, the question of maintainability on account of limitation needs to be decided first on the basis of averments of the plaint as well as the facts jotted down for constituting the cause of action but the question of maintainability of suit whether it is barred by law or not cannot be depended on the decision of application moved for the amendment in the plaint under Order VI Rule 17 CPC. The plaintiffs have mentioned the facts constituting the cause of action in paragraph 19 of the plaint which is reproduced as under:-

“19. That the cause of action has been accrued to the Plaintiffs firstly, on 23.02.2008 when an agreement of sale was executed between Plaintiffs and Defendants and the above referred Landlord, secondly, on 25.09.2014 when first two consecutive payments of Rs.14,500,000/- & Rs.3,000,000/- were made by the Plaintiffs and next two consecutive payments of Rs.4,800,000/- and Rs.200,000/- from the business account of Plaintiffs and Defendants, thirdly, on 22.05.2008 when the suit property was transferred in favor of Defendant No.1 In view of the policy of the Army Housing Scheme, Askari-IV that the property can only be transferred in the name of one person, while there were four persons viz. two plaintiffs and Defendants No.1 and 2 who equally invested their amount/share in respect of purchase of the said house. Fourthly, on 30-05-2008, when a Sale Deed was executed in favour of the Defendant No.1, fifthly, on 27.03.2013 when the Defendant No.1 sworn his affidavit and categorically deposed that the 50% share of the house will be transferred to the Plaintiffs, Sixthly, when the Defendant No.1 sent a letter to the Director General, AG's 'Branch, GHQ Rawalpindi regarding 50% share of the Plaintiffs in the suit property and declared that the Property SUH-220, Askari IV, Rashid Minhas Road, Karachi was purchased by us with my partner/(s) and due to internal policy of Army Housing, GHQ, Rawalpindi, the NOC in respect of purchase of the property could not be issued in the name of more than one person/or in the name of four persons, therefore, the transaction had executed in my name, however, 50% of the share of said house is liable to surrender to my partner namely Mr. Abdul Wahab son of Mubarak Shah holding CNIC No.37101-1802167-3 and further declared that any transaction regarding sale of the House will be processed with the concern of both partners, Seventhly, when Defendant No.1 backed out from his obligation/commitment to transfer 50% share of the Plaintiffs in the month of October, 2014, Eighthly, on 01-11-2014 when Plaintiffs sent an application through their legal counsel Messrs. Kashif Paracha Law Associates to the Director General - Housing GHQ, Rawalpindi wherein requesting that the Defendant No.1 may not be allowed to transfer/convey/gift/or create any third party interest or tenancy in the said House and NOC for the sale of suit property may not be issued to Defendant No.1 and Mr. Islam Badsha may be called to surrender/transfer 50% share in favour of the Plaintiff/(s). Further both Plaintiffs namely Abdul Wahab Shah and Ihsan ul Haq Shah also sent a letter

to DG-Housing, GHQ, Rawalpindi, on personal level, requested the same as mentioned in the application of legal counsel, the last one Ninthly, on 30-04-2015 When DG Housing, GHQ, Rawalpindi, sent a reply addressed to the Plaintiff No.1, his Legal Counsel namely Messrs. Kashif Paracha Law Associates and Defendant No.1 that as per record the NOC for the purchase of the said house was issued in the name of Muhammad Islam Badshah, therefore, parties may approach to civil court for the settlement of their disputes”.

11. In the case of Rana Imran & another v. Fahad Noor Khan & others (**2011 YLR 1473**), (authored by one of us), it was held that the word "cause of action" means bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment. The totality of the facts must co-exist and if anything is wanting the claim would be incompetent. A part is included in the whole but the whole can never be equal to the part. It is also well understood that not only the party seeking relief should have a cause of action when the transaction or the alleged act is done but also at the time of the institution of the claim, a suitor is required to show that not only a right has been infringed in a manner to entitle him to a relief but also that when he approached the Court the right to seek the relief was in existence. The learned counsel for the respondent No.1 and 2 argued that according to the cause of action pleaded by the plaintiff in their suit, the suit was not barred by limitation but on the contrary, the learned counsel for the petitioner/defendant argued if the cause of action pleaded in the plaint is considered solely even then the suit is barred by time.

12. The learned counsel appearing for the parties informed us that the Suit No.228/2022, which was instituted at the original side of the Sindh High Court has now been transferred to the 12th Senior Civil Judge Karachi (East), where a new number of Suit i.e. 6892 of 2025 has been allocated. Though the learned divisional bench by means of impugned judgment set aside the order dated 27.09.2024 passed by the learned single judge of the High Court whereby the plaint was rejected being barred by time but at the same time directed that all applications should be heard together which directions in our view does not based on correct exposition

of law. Despite remand, since the question of maintainability is still in field therefore, this should be decided independently keeping in mind the averments of the plaint and the facts pleaded for constituting the cause of action without adverting to the application moved for the amendment in the pleading. Admittedly, according to the learned counsel for the parties, no application was moved under Order VII Rule 11 C.P.C and the issue of maintainability on account of limitation was raised by the Court on its own motion which perhaps escaped the attention of the learned High Court whilst deciding the High Court Appeal.

13. 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.

Judge

Judge

Judge

Islamabad

03.06.2026

Approved for reporting
Arshad