

Rejection of Complaint on Limitation: Supreme Court Requires Maintainability to Be Decided Before Amendment

The Supreme Court directed the trial court to decide limitation and maintainability independently of a pending complaint amendment, without finally deciding the time bar.

Civil Petition No. 675 of 2025 | 2026-06-03

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Limitation must be decided independently of the amendment application

The Supreme Court of Pakistan has clarified that a court may examine limitation on its own initiative, even where the defendant has not filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. In the case before it, the Court directed the trial court to decide maintainability independently of the pending application to amend the complaint under Order VI Rule 17.

The decision is Muhammad Islam Badshah and another v Abdul Wahab Shah and others, Civil Petition No. 675 of 2025, dated 3 June 2026. Justice Muhammad Ali Mazhar authored the judgment for a Bench comprising Justice Mazhar, Justice Musarrat Hilali and Justice Irfan Saadat Khan. The supplied eight-page copy is approved for reporting but does not contain a reporter citation.

The outcome needs careful statement. The Supreme Court did not itself finally hold that the suit was time-barred. It partly allowed the appeal and corrected the High Court's direction that maintainability should be decided together with the amendment application. The trial court must first determine maintainability according to law, after giving the parties ample opportunity to be heard.

The property dispute and the remand order

The litigation concerned a 500-square-yard house in Askari-IV, Karachi. The plaintiffs sought declaration, permanent injunction, possession, distribution and partition, including damages. Their pleaded case concerned investment in the purchase and a claimed share in a house whose title had been placed in one person's name.

On 27 September 2024, a Single Judge of the Sindh High Court, exercising original civil jurisdiction, took up maintainability and rejected the complaint as barred by limitation. The question had been raised by the court itself. There was no defendant's application under Order VII Rule 11.

The plaintiffs filed High Court Appeal No. 464 of 2024. On 6 February 2025, the Division Bench set aside the rejection and directed that the applications, including the question of maintainability and the pending amendment application, be decided. The Supreme Court examined the correctness of that procedural direction.

By the time of the Supreme Court hearing, Suit No. 228 of 2022 had been transferred from the High Court's original side to the 12th Senior Civil Judge, Karachi East, where it was renumbered Suit No. 6892 of 2025. That court was to make the fresh determination required by the final order.

Section 3 of the Limitation Act: a duty even without a defence

Paragraph 6 explains section 3 of the Limitation Act, 1908. Subject to sections 4 to 25, a suit, appeal or application brought after the prescribed period must be dismissed, even if limitation has not been raised as a defence.

The Court therefore treated limitation as an issue the court has an independent duty to examine. The absence of a formal objection does not make an otherwise time-barred proceeding maintainable. Nor does it permit the court to ignore the applicable statutory provisions affecting the computation or operation of limitation.

The judgment also stressed even-handed administration of limitation, including where the State is a litigant. Its reasoning concerns the timely enforcement of rights, rather than a licence to disregard a legally applicable exception merely because considerable time has passed.

For counsel, the practical task is to identify the applicable limitation article, the legally material dates and any properly available statutory qualification. A bare assertion that a claim is old does not replace that analysis.

Can a court reject a plaint without an Order VII Rule 11 application?

Yes. Paragraph 7 expressly rejects the idea that the court's power depends on the defendant first filing an application. A court may act on its own initiative under Order VII Rule 11 where the conditions of the Rule are satisfied. Section 3 separately imposes the duty to dismiss proceedings brought out of time.

The Court distinguished dismissal under section 3 from rejection of a plaint under Order VII Rule 11. Both featured in its explanation, but they should not be treated as interchangeable labels with identical procedural consequences. The actual ground and form of the order matter.

For rejection of a plaint, the Court emphasized a meaningful reading of the plaint. A court should not conduct a mini-trial or decide the threshold issue by examining the defendant's written statement. It may intervene at an early stage, even before summons, where the plaint itself reveals the relevant defect or legal bar.

That power is controlled by the Rule. It does not authorize resolution of genuinely disputed evidence merely because a party describes its objection as one of maintainability.

The Rule's safeguards and the prohibition on partial rejection

Paragraph 8 identifies the familiar grounds: failure to disclose a cause of action, undervaluation not corrected within the time allowed, insufficient stamping not remedied when required, and a suit shown by the plaint's own statements to be barred by law.

The opportunity to correct valuation or supply the required stamp paper is material to the corresponding grounds. A curable defect cannot simply be equated with an incurable statutory prohibition.

The judgment also states that the law does not permit piecemeal rejection. Where even one prayer is maintainable, the plaint cannot be rejected in parts. This concerns rejection of the plaint at the threshold; it does not mean that every relief in a suit must ultimately succeed or that the merits of separate claims can never be examined.

A defendant seeking rejection must therefore address the plaint as a whole and the conditions of the relevant Rule. A plaintiff resisting rejection should identify the actionable claim or factual inquiry that prevents the proposed threshold disposal.

Mixed questions of law and fact require the proper process

The Supreme Court preserved an important qualification. Where the objection involves mixed questions of law and fact, the appropriate course may require a written statement, discovery, issues and evidence, rather than immediate rejection.

The court must distinguish a legal bar apparent from the plaint from a controversy that cannot be resolved without establishing disputed facts. The judgment describes determination through preliminary issues or a regular trial, with equal opportunity for both sides and a decision on the evidence where required.

That qualification should be read alongside the final direction to decide maintainability first in this case. The direction requires a lawful determination and ample hearing; it does not predetermine the answer or erase the distinction between a facial defect and a fact-dependent objection.

Order VI Rule 17: amendment cannot rebuild the case's foundation

Paragraph 9 explains that amendment is discretionary and can be allowed where necessary to determine the real controversy and deliver complete justice. The Court nevertheless emphasized that an amendment should not fundamentally alter the character or foundation of the suit.

Its description of changing the complexion of a suit concerns replacing its essential identity, rather than clarifying or developing the existing case. The Court's approach was permissive toward amendments genuinely needed to resolve the dispute but restrictive where the proposed change would transform the case into something fundamentally different.

The present judgment did not allow or dismiss the pending amendment application on its merits. It addressed the sequencing of the maintainability decision. It should not be cited as an adjudication of an amendment the Supreme Court did not itself determine.

The pleaded cause of action remained central

Paragraph 10 reproduces the plaintiffs' cause-of-action paragraph. It alleged several events concerning purchase, payments, transfer of title, an acknowledgment of the claimed share and a later refusal to transfer it. The paragraph included an alleged refusal in October 2014 and correspondence culminating in a Housing Directorate reply dated 30 April 2015 advising recourse to a civil court.

These were allegations in the plaint, not Supreme Court findings that ownership, investment or entitlement to a share had been proved. The parties disputed whether those pleaded events made the suit timely. The Supreme Court left that determination to the trial court.

In paragraph 11, it cited *Rana Imran and another v Fahad Noor Khan and others*, 2011 YLR 1473, for the meaning of cause of action as the bundle of facts required to establish entitlement to relief. The present judgment also emphasized that the right to seek relief must exist when the claim is instituted. This account of *Rana Imran* is confined to the proposition reproduced by the Supreme Court; it does not add an independently researched history of that case.

What the Supreme Court actually ordered

Paragraphs 12 and 13 provide the decisive procedural answer. Maintainability remained open after remand and had to be decided independently by reference to the plaint and pleaded cause of action, without making its determination depend on the amendment application.

The civil petition was converted into an appeal and partly allowed. The Division Bench order dated 6 February 2025 was set aside only to the extent of its direction requiring the maintainability issue to be decided together with the amendment application. The trial court was directed to decide maintainability first, give ample opportunity of hearing and then proceed further.

The Supreme Court neither dismissed the entire suit itself nor simply restored the original rejection as a final outcome. Those descriptions would turn a limited procedural correction into a merits determination the operative order did not make.

Practical points for plaintiffs and defendants

For a plaintiff, the plaint should identify the actual cause of action, material dates and basis for the relief. Where limitation depends on disputed facts or an applicable statutory qualification, counsel should explain that distinction clearly. A pending amendment application should not be treated as a reason to postpone the independent maintainability inquiry ordered in this case.

For a defendant, the objection should identify the relevant limitation provision and demonstrate the asserted bar through the plaint where threshold rejection is sought. The judgment supports the court's own power to examine the point, but it does not remove the safeguards applicable to mixed questions or authorize selective rejection of individual prayers.

For the court, the practical sequence is to identify the legal test, hear both parties, examine the pleaded cause of action and determine maintainability by the procedure the issue requires. The parties' ownership and partition dispute should not be confused with the separate question of whether their suit can proceed.

Frequently asked questions

Is a defendant's application necessary before limitation can be examined?

No. Section 3 requires the court to examine limitation even when it is not pleaded as a defence. The Supreme Court also recognized the court's power to act on its own initiative under Order VII Rule 11 when that Rule's conditions are satisfied.

Did the Supreme Court finally declare this suit time-barred?

No. It directed the trial court to decide maintainability first after ample hearing. It corrected only the direction requiring that issue to be decided together with the plaint-amendment application.

Can part of a plaint be rejected while another prayer is maintainable?

The judgment says piecemeal rejection is not permitted. If a prayer is maintainable, the plaint cannot be rejected in parts at the threshold. That does not decide whether every relief will succeed at trial.

Source and paragraph guide

The complete supplied eight-page Supreme Court judgment is available through the judgment PDF download. Paragraphs 2 to 5 explain the procedural dispute; paragraphs 6 to 8 cover limitation and rejection; paragraph 9 addresses amendment; paragraphs 10 and 11 concern the pleaded cause of action; paragraphs 12 and 13 contain the remand analysis and operative direction. The article PDF is a separate explanation of the ruling.

Primary sources and online article

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