

IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 19/13 OF 2021
 DATE OF INSTITUTION : 05.04.2021
 DATE OF DECISION : 10.04.2021

MUHAMMAD IBRAR S/O MUHAMMAD ISRAR, CASTE FERAZ
 KHEL, TAPA JAISAL KHEL, VILLAGE GOYEEN, TEHSIL LOWER,
 DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-


CHAIRMAN NADRA ISLAMABAD AND TWO OTHERS

..... (RESPONDENTS)

Present: Sana Ullah Khan Advocate for appellant.
 : Syed Farhat Abbas, representative of respondents

JUDGEMENT
 10.04.2021


In the suit before the trial court, appellant/plaintiff claimed the correction of his date of birth from 01.10.2009 to 01.10.2011 in the record of the respondents. The case was fixed for evidence but upon failure of the appellant/plaintiff to produce evidence, the learned trial court resorted to the penal provisions of the CPC and thereby struck down his right of producing evidence within the meanings of Order 17 Rule 3 of the CPC through impugned order dated 08.03.2021, hence the appeal in hand.


 (ASGHAR SHAH)
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 at Baber Mela



2. Arguments heard and record perused.
3. From the arguments and record available on file, it reveals that the learned trial court fixed the case on 11.02.2020 for evidence to be recorded on 20.02.2020 but however even

after availing opportunities of about 01 year and 01 month, the appellant/plaintiff only recorded the statements of two witnesses. The learned trial court during the period of said 01 year and 01 month several times passed strict orders directing the appellant/plaintiff besides issued notices of Order 17 Rule 3 of CPC many times to produce evidence but of no use. Hence, the impugned order was passed against the appellant/plaintiff and resultantly his right of producing evidence was struck down. The learned counsel for the appellant/plaintiff submitted that the appellant/plaintiff is minor and the suit is instituted through his next friend i.e., father who is working in the Sindh Rangers due to which he could not attend the court for evidence and requested for provision of single opportunity to conclude their evidence. There is nothing wrong in the impugned order on the legal side, however on humanitarian grounds let the appellant/plaintiff be provided a single chance as requested in order to dispose of the matter on merits.


 (ASGHAR SHAH)
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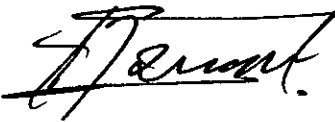


4. Therefore, without touching the other merits of the case, appeal in hand is accepted but at the cost of Rs 5000/-, impugned order of the trial court is set aside and case is remanded back to the trial court where the case is pending for 13.04.2021 with the directions to the trial court to provide a single opportunity for evidence to the appellant/plaintiff and the single date be fixed with consent of both the parties/counsel or their representatives. On the date so fixed by the trial court, appellant/plaintiff will be

bound to pay cost of Rs 5000/- to the representative of the respondents as well as to produce his entire evidence failing which the trial court is at liberty to resort to the penal provisions of the CPC.

- 5. File of the trial court be returned while file of this court be consigned to Record Room after its completion and compilation.

Announced
10.04.2021

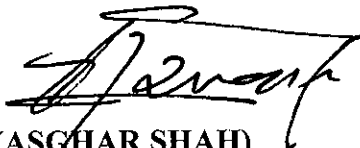

 (ASGHAR SHAH)
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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 10.04.2021




 (ASGHAR SHAH)
 District Judge, Orakzai
 at Baber Mela